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RECORD, CASE No. 13,726.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 145.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERRING, NICHOLAS McALPINE, AND JAMES M. MASON, PLAINTIFFS IN ERROR,

vs.

GEORGE W. TOURTELOTT AND GEORGE P. ALCUTT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED OCTOBER 11, 1889.

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1 In the Supreme Court of the United States of America.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERRING, Nicholas McAlpine, and James M. Mason, Plaintiffs in Error,
vs.
GEORGE W. TOURTELLOTT and GEORGE P. ALCUTT, Defendants in Error.
} In Error.

Of the October term, of the year one thousand eight hundred and eighty-nine.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Charles Wilkins, William Willis, John Sperring, Nicholas McAlpine, and James M. Mason, plaintiffs in error, by James M. Mason and John W. Day, their attorneys, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit:

I. That by the record aforesaid it appears that the judgment was given for the said defendants in error against the said plaintiffs in error, whereas, by the law of the land, said judgment ought to have been given for the said plaintiffs in error against the said defendants in error. (Corresponding to XXVII assignment for error in the State court.)

2 II. That the supreme court of the State of Kansas erred in sustaining the trial court in the following finding of fact and conclusion of law, the same being the second finding of fact of the trial court, to wit:

"Second. That on the same day said James Gladden, in writing, assigned and transferred this bond for a deed to one Henry R. Seegar for the nominal consideration of $1,000, but in fact without any consideration, and which assignment made by the said Gladden to the said Seegar was duly executed, acknowledged, and proved by the said Gladden on March 6, 1860, and recorded in the proper register of deed's office of Wyandotte county October 1, 1860, a copy of which bond and assignment is as follows:

Know all men by these presents that I, David E. James, of the county of Wyandotte and Territory of Kansas, do hereby bind myself, my heirs and assigns, to convey unto said James Gladden, his heirs and assign, by a good and valid deed, one undivided ten acres of the west half of the southwest quarter of section No. 11 and of the east half of the southeast quarter of No. 10, in township No. 11, being in the forks of the Kansas and Missouri rivers, in the county of Wyandotte, K. T., and all consisting of one undivided ten (10) acres.

It is hereby covenanted and agreed that the aforesaid conveyance shall be made at any time within one year from the date of this instrument. It is also agreed and understood that said con-

veyance is to be made subject to and in accordance with the terms and conditions of a certain mortgage given upon said real estate by said James to one Silas Armstrong, and which is recorded in the proper office of the county of Wyandotte, K. T.

In witness whereof I have hereunto set my hand and seal this 5th day of March, A. D. 1860.

DAVID E. JAMES. [L. S.]

3 Know all men by these presents that —, the within-named James Gladden, in consideration of one thousand dollars to me in hand paid by Henry R. Seegar, the receipt of which I do hereby acknowledge, have bargained, sold, assigned, and set over all my right, title, interest, claim, property, and demand whatsoever in and to the within bond unto the said Henry R. Seegar and his assigns forever.

In witness whereof I have hereunto set my hand and seal this 5th day of March, A. D, 1860.

JAMES his x mark. GLADDEN. [L. S.]

In the presence of—
LOUIS B. SCOTT.
JOSEPH E. SNYDER.

STATE OF MISSOURI, *County of Jackson,* } *ss:*

Be it remembered that on this 6th day of March, 1860, before me, John S. Hough, clerk of Kansas City court of common pleas for Kaw township, in the county and State aforesaid, personally appeared James Gladden, who is well known to me as the person whose name is subscribed to the foregoing instrument of writing, and acknowledged the same to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Kansas, on the day and date above written.

JOHN S. HOUGH, *Clerk,*
[L. S.] By LOUIS B. SCOTT, *D. C.*

Recorded October 1, A. D. 1860, at 5 p. m.
V. J. LANE,
Register of Deeds,
By JAMES A. CRUISE, *D. R.*"

4 Because the evidence conclusively shows that said Joseph E. Snyder paid a full consideration to James Gladden for the assignment of said title bond, and that he took and held said title bond in the name of his brother-in-law, Henry R. Seegar, for the purpose of defeating his creditors prior to his bankruptcy, and there was no evidence to the contrary; and for the further reason that the 7th section of chapter 21 of the Statutes of Kansas, entitled "An

act relating to contracts and promises." reads as follows, to wit: "Sec. 7. All contracts in writing, signed by the party bound thereby or his authorized agent or attorney, shall import a consideration," and said title bond being a contract in writing, with a consideration expressed therein, such finding was contrary to the law and the evidence. (See XII assignment for error in the State court.)

III. That the supreme court of the State of Kansas erred in sustaining the trial court in its twenty-second finding of fact, erroneously so classed by the trial court, the same being more properly a conclusion of law, as follows, to wit (see XIII assignment for error in the State court):

"Twenty-second. That Snyder was divested of his title to said land by the judicial sale upon the judgments obtained against him by said C. F. Welland and Henry R. Seegar in the said district court of Wyandotte county."

Because that prior to said judicial sale upon the judgment mentioned in said finding said Joseph E. Snyder had been divested of all title, estate, and interest in said premises under prior proceedings in bankruptcy in the United States district court of the western district of Missouri, and because, further, that said attachment proceedings were void for want of proper and legal service of the attachment.

IV. That the supreme court of the State of Kansas erred in sustaining the trial court in that part of the twenty-third finding of fact, erroneously so called, the same being more properly a conclusion of law, which finds that "jurisdiction was obtained in said actions by said proceedings in attachment thereon against the lands in controversy in this action," because there was no evidence of a valid service of the orders of attachment in said proceedings. (See XIV assignment for error in the trial court.)

V. That the supreme court of Kansas erred in sustaining the trial court in the twenty-fourth and twenty-fifth findings of fact, erroneously so classed, they being conclusions of law, to wit, "That said attachment orders, returns, and proceedings were sufficient to vest the court with jurisdiction in said actions," and, twenty-fifth, "That the plaintiff herein hold by regular legal conveyance and title acquired by purchase at said sale under said attachment proceedings," "because that prior to the judicial sale under said attachment proceedings and the judgment therein mentioned in the twenty-second finding of fact aforesaid said Joseph E. Snyder had been divested of all title, estate, and interest in said premises under prior proceedings in bankruptcy in the United States district court of the western district of Missouri, and because, further, that said attachment proceedings were void for want of proper legal service of the orders of attachment, and there was no evidence of a valid service of the orders of attachment in said proceedings. (See XV and XVI assignment for error in the State court.)

VI. The supreme court of the State of Kansas erred in sustaining the first, second, third, and fourth conclusions of law of the trial court, as follows, to wit (see assignment for error in State court Nos. XXI, XXII, XXIII, and XXIV):

"1. That the title bond made by David E. James to James Gladden and by him assigned to Henry R. Seegar and held by the said Joseph E. Snyder did not vest in the said Snyder any title, legal or equitable, in the premises described in the plaintiff's petition.

"2. That the deed described in conclusion of fact No. 3 did not vest in the said Snyder any title, legal or equitable, in the premises described in the plaintiff's petition.

"3. That on December 2, 1867, when the said Snyder filed his petition in bankruptcy in the district court of the United States for the district of Missouri, the said Snyder was not the owner of the legal and equitable title or any estate in the premises described in the plaintiff's petition.

"4. That on April 13, 1869, after the said Sylver had been adjudged a bankrupt in the court of competent jurisdiction aforesaid, Snyder acquired the legal and equitable title to the premises described in the plaintiff's petition from the said David E. James by virtue of the deed of conveyance described in conclusion of fact No. 8, and that the said premises were no part of the estate of the said Snyder at the time he was adjudged a bankrupt, and that therefore the district court of the United States for the district of Missouri, sitting as a court of bankruptcy, had no jurisdiction to sell or dispose of the said premises to Byron Judd, and the sale of said premises described in the deed of conveyance made
7 by the assignee in bankruptcy to Judd conveyed no title, legal or equitable, to said Judd or to those holding under him."

For the reasons:

1. That said conclusions of law are inconsistent with the findings of fact and repugnant to the evidence and not sustained by the record.

2. That by the partition of lands, by the recognition of Snyder's equitable interest and title and ratification of Snyder's acts by James, and the exchange of lands by and between James and Snyder by deeds mentioned in the 7th and 8th findings of fact and as set forth in the 30th finding of fact the equitable interest and title of Joseph E. Snyder in and to the land in controversy accruing to him under the title bond of 1860, the *carte blanche* deed of July 27th, 1864, and the contemporaneous verbal agreements between James and Snyder prior to the filing of Snyder's petition in bankruptcy received the first real, definite, and final location, and therefore the premises in controversy were in fact and in law bankrupt assets derived from said sources, which sources were prior to the filing of Snyder's petition in bankruptcy.

3. Because the evidence and the record show that said Joseph E. Snyder was a party to said bankruptcy proceedings from their first inception until their close, and that he held the legal title of record to the land in controversy at the time of the decree of sale thereof by the bankruptcy court, and said decree of sale was based on allegations duly made by the assignee in bankruptcy (in scheduling the same under the orders of the bankruptcy court) that the same was bankrupt assets and the court found that the same was bank-

rupt assets of the said Joseph E. Snyder and ordered the
8 same sold as such; that the same was sold as such by the assignee in bankruptcy and such sale was confirmed by the bankruptcy court, and the assignee conveyed the same to Byron Judd, from whom and his assigns and grantees by regular conveyances the plaintiffs in error claim title and possession. (Ninth to nineteenth findings of fact, inclusive.)

VII. The supreme court of the State of Kansas erred in sustaining the trial court in its conclusions of law numbered 5 and 6, to wit (see XXV and XXVI assignment for error in the State court):

"5. That by virtue of the force of the two orders of attachment issued by the clerk of the district court of Wyandotte county on the 14th day of May, 1874, in the action then commenced in said court by Henry R. Seegar against the said Joseph E. Snyder and the action of C. F. Welland against the said Snyder and the return of the sheriff of Wyandotte county of his official acts under said two writs of attachment the said court acquired and had jurisdiction of the real estate described in the plaintiffs' petition, and vested said title to said premises in the purchaser at the sheriff's sale held and made in pursuance of the judgments of said court, and that the plaintiffs herein hold by regular conveyance and title acquired from the purchaser at said sheriff's sale under said attachment proceedings.

"6. That the plaintiffs are the owners of the legal and equitable title to the premises described in the plaintiffs' petition and are entitled to the possession of said premises, and the defendants unlawfully keep the plaintiffs out of the possession of the said premises."

9 For the reason that the record shows that said attachment proceedings were not based upon any valid service of the orders of attachment therein, and that long prior to said attachment proceedings the title to said land had passed out of and from said attachment debtor, Joseph E. Snyder, to the grantors of the plaintiffs in error under said bankruptcy proceedings and the assignee's deed made in pursuance thereof, as will more fully appear by the record hereto attached.

VIII. The supreme court of the State of Kansas erred in sustaining the trial court in allowing and receiving in evidence the two sheriff's deeds introduced by the defendants in error, plaintiffs in the trial court, based on said void attachment proceedings. (See I assignment for error in State court.)

IX. That the supreme court of the State of Kansas erred in sustaining the trial court in overruling the demurrer of the plaintiffs in error, defendants in the trial court, to the evidence of the defendants in error, plaintiffs in the trial court. (See III assignment for error in the State court.)

X. That the supreme court of the State of Kansas erred in sustaining the trial court in overruling the motion of plaintiffs in error, defendants below, for a new trial. (See XXVIII assignment for error in the State court.)

That all, each, and every of the above-mentioned findings, conclusions, and rulings were, at the time of the trial in the State court below, duly excepted to by the plaintiffs in error, as defendants in said trial court.

10 And the said plaintiffs in error, Charles Wilkins, William Willis, John Sperring, Nicholas McAlpine, and James M. Mason, pray that the judgment and decision aforesaid may be reversed, annulled, and altogether held for naught, and that they may be restored to all things which they have lost by occasion of the said judgment and decision.

JAMES M. MASON,
Per Se and as Attorney for Plaintiffs in Error.

JOHN W. DAY,
Of Counsel and as Attorney for Plaintiffs in Error.

[Endorsed:] 4808. Charles Wilkins *et al.*, pl'ffs in error, *vs.* George W. Tourtellott *et al.*, def'ts in error. Assignment of errors.

11 In the Supreme Court of the State of Kansas.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERRING, NICHOLAS MCALPINE, and JAMES M. MASON, Plaintiffs in Error,
vs.
GEORGE W. TOURTELLOTT and GEORGE P. ALCUTT, Defendants in Error. } 4808.

Be it remembered that on, to wit, the 18th day of October, 1887, there was filed in the office of the clerk of the supreme court of the State of Kansas a petition in error in the above-entitled cause, with a case-made attached thereto as Exhibit "A" and as a part thereof, which is in words and figures as follows, to wit:

12 In the Supreme Court, State of Kansas.

CHARLES WILKINS, JOHN SPERING, WILLIAM WILLIS, *et al.*,
Plaintiffs in Error,
vs.
GEORGE W. TOURTELLOTTE and GEORGE P. ALLCUT, Defendants in Error. } 4808.

Petition in Error and Case Made for Supreme Court.

James M. Mason, John W. Day, N. Cree, attorneys for plaintiffs in error; efferson Brumback, Charles W. Blair, attorneys for defendants in error.

13 In the Supreme Court of the State of Kansas.

Error from the district court of Shawnee county, Kansas.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERING, NICHOLAS MCALPINE, and JAMES M. MASON, Plaintiffs,
against
GEORGE W. TOURTELOTTE and GEORGE P. ALCUTT, Defendants. } 4808.

Petition in Error.

The said Charles Wilkins, William Willis, John Sperring, Nicholas, McAlpine, and James M. Mason, plaintiffs, complain of the said George W. Tourtelotte and George P. Allcutt, defendants, for that the said George W. Tourtelotte and George P. Allcutt, at the January term of the district court of Shawnee county, Kansas, on the 11th day of January, 1887, recovered a judgement by the consideration of said court against the said plaintiffs in error in a certain action then pending in said court wherein the said George W. Tourtelotte and George P. Allcutt were plaintiffs and the said Charles Wilkins, William Willis, John Sperring, Nicholas McAlpine, and James M. Mason were defendants; a copy of the record of the judgement and proceedings in which case, duly certified, is hereto attached, consisting of vols. 1 and 2nd, and marked "A" and made a part of this petition, and the said Charles Wilkins, William Willis, John Sperring, Nicholas McAlpine, and James M. Mason aver that there is error in the said record and proceedings in this, to wit:

I. That said court erred in admitting the evidence of the said George W. Tourtelotte and George P. Allcutt, plaintiffs below, namely, the two (2) sheriff's deeds to Lafayette Traber, one dated April 19th, 1875, and the other dated March 8th, 1879, and also in connection therewith the proceedings in attachment in the case of C. F. Welland against Joseph E. Snyder (see page 88 to 172, incl.); to the admission of which deeds and records in evidence and each and every paper thereof the defendants below and each of them duly objected. (See Record, pg. 88.)

II. The said court erred in admitting and considering in evidence the deed from said Lafayette Traber and wife to Joseph L. Norman and wife to the plaintiffs in the trial court below; to which the defendants in the trial court then duly objected and excepted. (See page 173 to 176, inclusive.)

III. That the said court erred in overruling the demurrer of the defendants below to the plaintiffs' evidence in the trial court (see pages 177, 178); to which ruling the defendants below then and there duly excepted.

IV. That the said court erred in ruling out and excluding the evidence offered by the defendants in the trial court on the trial of said action, namely, the depositions taken in the case in which Nicholas McAlpine was plaintiff and the said Tourtelotte and others were defendants in the United States circuit court for the district of Kansas, and in the same case in which the bill and answers which

we have introduced were filed. See offer of said evidence, pages 617, 618.

14 Also page 620, testimony of J. B. Garrett, separately.
" 645, " Mrs. Sophia Cobb, "
Also page 668, testimony of Benjamin Schinerle, separately.
" 673, " George Altop, "
" 691, " Dr. Geo. B. Wood, "
" 707, " Dr. Geo. B. Wood, "
" 716, " Wm. Glenn, "
" 726, " J. T. Campbell, "
" 731 A, " Henry R. Seegar, "
" 732 & 822, " C. F. Peters, "

Errors of the said trial court are likewise assigned for each of the said separate rulings pointed out by above paging.

IV. That the said court erred in ruling out and excluding from the evidence the matter in the testimony of Cornelia Street (pages 801 to 806). See pages 802, 803, 804, 805, 806.

To each of which separate rulings separate errors are assigned for the matters so ruled out on the trial of said action.

VI. That said court erred in ruling out and excluding from the evidence the matter in the testimony of Dr. Geo. B. Wood found on page 808:

Q. Can you state through what source Snyder derived his title to that land?

VII. That said court erred in ruling out and excluding from the evidence the lease by A. B. Bartlett and S. A. Cobb, offered by defendants below on the trial of said cause, said lease being to George Altop. (See pages 828, 829.)

VIII. That said court erred in admitting the evidence of plaintiffs below on the trial of said action found at pages 830 to 840, inclusive, of said record, being records of certain tax matters, to which said defendants below objected.

IX. That said court erred in admitting in evidence on the trial of said cause the certified copy of deed from Cobb and Bartlett and their wives to the Hannibal and St. Joseph Railroad Company, dated August 15th, 1872, offered by the plaintiffs below—see pages 841, 842, 843—to which said defendants below objected.

X. That said court erred in admitting in evidence the certified copy of release of April 28th, 1869, signed by Henry R. Segar, offered by the plaintiffs below on the trial of said action—see pages 844, 845—to which said defendants below objected.

XI. That said court erred in admitting in evidence the certified copy of judgment of Jaccard and Company, part of the bankrupt record before introduced—see pages 846, 847, 848, 849, 850, 851, 852, 853 of this record—to which said defendants below objected.

XII. That said court erred in that part of its 2nd finding of fact, found on page (857), which imports that the assignment of the title bond from James Gladden to one Henry R. Segar was "in fact without any consideration," there being no evidence in the record to warrant such a finding. See finding on page 865, No. 10.

XIII. That said court erred in its 22nd finding of fact, so called, on page 876, said finding being more properly classed among
15 conclusions of law and is erroneous.

XIV. That said court erred in its 23rd finding of fact, so called, on page 876, in that part of said finding which imports that jurisdiction was obtained over Joseph E. Snyder by said proceedings in attachment, which also is an erroneous conclusion of law.

XV. That said court also erred in its 24th finding of fact, so called, the same being an erroneous conclusion of law. See page 876.

XVI. That said court erred in its 25th finding of fact, so called, the same being an erroneous conclusion of law. See page 876.

XVII. That said court erred in its 26th finding of fact, so called, the same being an erroneous conclusion of law. See page 876.

XVIII. That said court erred in its 27th finding of fact, so called, the same being an erroneous conclusion of law. See page 876.

XIX. That said court erred in not following closely the findings of fact submitted by the defendants below and found between pages 855 and 856 of this record.

XX. That said court erred in each, every, and all of its "conclusions of law," numbered from 1 to 6 and from 22 to 27th, inclusive, and found on pages 876, 879, and 880, and should have found in accordance with the conclusions of law requested by defendants below Nos. 1 to 3, inclusive, on pages immediately before pages 856 of this record.

XXI. That the court erred in its first conclusion of law, found on page 879.

XXII. That said court erred in its 2nd conclusion of law, found on page 879.

XXIII. That said court erred in its 3rd conclusion of law, found on page 879.

XXIV. That said court erred in its 4th conclusion of law, found on page 879.

XXV. That said court erred in its 5th conclusion of law, found on page 880.

XXVI. That said court erred in its 6th conclusion of law, found on page 880.

XXVII. That said court erred in rendering a judgement against the defendants below and in favor of the plaintiffs below in said cause; see page 881; that under the findings of fact the judgement should have been the other way.

XXVIII. That said court erred in overruling the motion of the defendants below for a new trial—see motion on page 882 and ruling thereon on page 883—to which ruling of the court the defendants in the trial court at the time duly excepted.

The said Charles Wilkins, William Willis, John Sperring,
16 Nicholas McAlpine, and James M. Mason, plaintiffs in error, therefore pray that the said judgement may be reversed and the said plaintiffs restored to all things they have lost by reason

thereof, and that this proceedings shall operate as a supersedeas, suspending the said judgement during the pendency hereof.

JAMES M. MASON,
Per Se and as Attorney for the Plaintiffs in Error.
JOHN W. DAY,
Of Counsel.

17 Be it remembered that the plaintiffs, on the 23rd day of October, 1879, filed their petition in words and figures following, to wit:

STATE OF KANSAS:

District Court of Wyandotte County.

GEORGE W. TOURTELOTTE and GEORGE P. ALLCUTT, Plaintiffs,
vs.
CHARLES WILKINS, JOHN SPERING, WILLIAM WILLIS, NICHOLAS McALPINE, James M. Mason, and Annie Mason, His Wife, Defendants.

Petition.

The plaintiffs above named, for a cause of action against above-named defendants, allege—

That on the first day of August, 1879, the said plaintiffs had and still have a legal title and estate in and to and are entitled to the possession of the following-described real estate situated in the county of Wyandotte and State of Kansas, to wit:

Beginning six hundred and forty (640) feet two (2) inches south sixty-one degrees thirty (30) minutes west from another point thirty-four hundred and eighty-four and one-half (3,484½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, and running thence from said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred and eighty (180) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred and eighty (180) feet to the place of beginning.

That while said plaintiffs had such legal estate in and entitled to the possession of said lands the said defendants did, on the day and year last above stated, unlawfully enter upon said premises except that part thereof described as follows: About twenty-five (25) feet by fifty-four (54) feet on the east side of Wood street, being all that is fenced in and occupied by Frank Rodie; also excepting that part of said premises described as follows: A piece of land fifty (50) feet square in the southwesternly corner thereof occupied by Anton Hoeuf, and unlawfully withheld and still unlawfully withhold the possession thereof from plaintiffs, to their damage in the sum of two thousand dollars ($2,000).

That the monthly value of the rents and profits of the said land so unlawfully withheld is one hundred and fifty dollars ($150).

Wherefore the plaintiffs demand judgment against said defendants:

1st. For the restitution of said lands and premises.

2nd. For the sum of two thousand dollars ($2,000) damages for the withholding thereof.

3rd. For the value of the rents and profits from the time of such unlawful entry to the trial of this cause at the rate of one hundred and fifty dollars ($150) per month, together with the costs of this action.

PRATT, BRUMBACK AND FERRY,
Attorneys for Plaintiffs.

Filed October 23rd, 1879.

G. W. BETTS, *Clerk.*

18 Be it remembered that on the 23rd day of October, 1879, the plaintiffs filed their precipe for summons in words and figures following:

STATE OF KANSAS:

District Court of Wyandotte County.

GEORGE W. TOURTELOTT and GEO. P. ALLCUTT, Plaintiffs,
vs.
CHARLES WILKINS, JOHN SPERING, WILLARD WILLISS, NICHOLAS McALPINE, James M. Mason, and Annie Mason, His Wife, Defendants.

To the clerk of said court:

You wtll please issue summons in above-entitled action, directed to the sheriff of Wyandotte county, for the defendants Charles Wilkins, John Spering, William Willis, Nicholas McAlpine, James M. Mason, and Annie Mason, his wife, returnable according to law.

PRATT, BRUMBACK AND PERRY,
Attorneys for Plaintiffs.

Filed October 23rd, 1879.

G. W. BETTS, *Clerk.*

Whereupon thereafter the following summons was issued and return made thereon by the sheriff in words and figures following, to wit:

THE UNITED STATES OF AMERICA,
The State of Kansas, Tenth Judicial District, Wyandotte County, } ss:

The State of Kansas to the sheriff of Wyandotte county, in said State, Greeting:

You are hereby commanded to notify Charles Wilkins, John Spering, William Willis, Nicholas McAlpine, James M. Mason, and

Annie Mason, defendants, that they have been sued by George W. Tourtelotte and George P. Alcutt, plaintiffs, in the district court for the State of Kansas, sitting within and for Wyandotte county, and unless they answer by the 17th day of November, 1879, the petition of said plaintiff against them filed in the clerk's office of the court aforesaid the same will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 27th day of October, 1879.

Witness my hand and the seal of said court, affixed at my office, in the city of Wyandotte, this 23rd day of October, 1879.

[SEAL.] G. W. BETTS, *Clerk.*

THE STATE OF KANSAS, } ss :
County of Wyandotte, }

Received this summons on the 23rd day of October, 1879, at nine (9) o'clock a. m., and served the same in my county by giving a true copy to the within-named James M. Mason, Annie Mason, John Spering, W. McAlpine, — Wm. Willis on the 25th day of October, 1879. Charles Wilkins could not be found in my county on the 25th day of October, 1879.

W. H. ROGERS, *Sheriff,*
By D. M. WARD, *Deputy.*

19 Be it remembered that the defendants, on the 17th day of November, 1879, filed their answer in words and figures following, to wit:

In the District Court of the 10th Judicial District of the State of Kansas, Sitting in and for Wyandotte County, Kansas.

GEO. W. TOURTELOTTE and GEORGE P. ALLCUTT, Plaintiffs, *against* CHARLES WILKINS, JOHN SPERLING, WILLIAM WILLIS, Nicholas McAlpine, James M. Mason, and Annie Mason, Defendants. } Case No. 2547.

Answer of All the Defendants Except Annie Mason.

Defendants for answer admit that they are in possession of the premises described in the plaintiffs' petition and aver that they are lawfully entitled to the possession thereof and deny each and every other allegation in said petition contained.

JAMES M. MASON,
Per — and as Attorney for the Defendants.

Filed November 17th, 1879.

G. W. BETTS, *Clerk.*

Be it remembered further that the defendant Annie Mason filed her separate answer in said court in said cause on the 17th day of November, 1879, in words and figures following:

In the District Court of the 10th Judicial District of the State of Kansas, in Wyandotte County, Kansas.

GEORGE W. TOURTELOTTE and GEO. P. ALLCUTT, Plaintiffs,
against
CHARLES WILKINS, JOHN SPERING, WILLIAM WILLIS, Nicholas McAlpine, James M. Mason, and Annie Mason, Defendants. } No. 2547.

The said defendant, Annie Mason, for separate answer to plaintiffs' petition says:

1st. That she is not in possession of said premises mentioned in said plaintiffs' petition under any claim in her own right, but only as a member of the family of the said defendant, James M. Mason, and under his direction and control, without any voluntary act of her own; that in her own right she sets up no right, claim, or title or demand to the said premises save and except that which be-ho-ves her and is proper as the wife of the said James M. Mason, specially disclaiming any other right, title, or interest therein; that whenever the court renders a decree against the said J. M. Mason or a judgement herein for possession of said premises and he departs therefrom so she will do likewise.

II. That, except as above, said defendant, Annie Mason, says that she denies each and every allegation in said petition contained.

III. Said defendant further says that she denies that she is a proper party to this suit.

IV. Said defendant denies that she is a necessary party
20 thereto and prays the court that the said action be dismissed as to her and she recover her costs in this behalf expended of and from the said plaintiffs.

JAMES M. MASON,
Attorney for Defendants.

Filed November 17th, 1879.

G. W. BETTS, *Clerk.*

Be it further remembered that the plaintiffs, on leave of court having been first given, filed their amended petition herein on the 6th day of December, 1879, in words and figures following:

21 In the District Court of Wyandotte County, Kansas, Tenth Judicial District.

GEORGE W. TOURTELOTTE and GEO. P. ALLCUTT, Plaintiffs,
vs.
CHARLES WILKINS, JOHN SPERING, WILLIAM WILLIS, NICHOLAS MCALPINE, JAMES M. MASON, and —— ——, Defendants.

Amended Petition.

For amended petition herein and for cause of action against said defendants plaintiffs say—

That at the time of the filing of the original petition herein and

the commencement of this action plaintiffs had and ever since have had and now have a legal estate in and were then and have since and now are entitled to the possession of the following-described real estate and property situated in Wyandotte county, Kansas, thus bounded, to wit:

Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty minutes west from another point thirty-four hundred and eighty-four and one-half (3,484½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, and running thence from said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred and eighty (180) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet, and thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred and eighty (180) feet to the place of beginning, except a part thereof described as follows, to wit: About twenty-five (25) feet by fifty-four (54) feet on the east side of Wood street, being all that is fenced in and occupied by Frank Rodie, and also excepting that part of said premises described as follows, to wit: A piece of land fifty (50) feet square in the southwesterly corner thereof occupied by Anton Hoenf at the commencement of this action.

That defendants at the filing of the original petition and the commencement of this action unlawfully kept and are ever since keeping unlawfully and still unlawfully keep plaintiffs out of the possession of said premises and real property, in which plaintiffs had and still have a legal estate as aforesaid.

Plaintiffs therefore pray judgment against said defendants for the recovery of said real property and for costs of suit.

PRATT, BRUMBACK AND FERREY,
Attorneys for Plaintiffs.

Filed December 6th, 1879.

G. W. BETTS, *Clerk.*

22 And afterwards the following proceedings were had in said cause, of which the following is the journal entry, in words and figures following, to wit:

SATURDAY, *December 6th*, 1879.

Journal "1," pages 132, 133.

GEO. W. TOURTELOTT and GEO. P. ALLCUTT, Plaintiffs,
vs.
CHARLES WILKINS, JOHN SPERING, WILLIAM WILLIS, NICHOLAS McALPINE, JAMES M. MASON, and ANNIE MASON, His Wife, Defendants.

This day came plaintiffs and dismiss this action as to the defendant Annie Mason without prejudice; thereupon, with leave of court,

plaintiffs file an amended petition herein, and defendants, with consent of plaintiffs, treat their answer to original petition filed November 17th, 1879, as an answer to amended petition.

Whereupon the parties in writing waive a trial by jury and the cause is tried by the court, and the court, upon examination of the amended petition and answer hereto and testimony, find the issues joined for defendants.

It is therefore considered that said defendants, Charles Wilkins, John Spering, William Willis, Nicholas McAlpine, and James M. Mason, go hence without day and recover of said plaintiffs' pay their own costs.

This being an action for the recovery of real property, said plaintiffs now come and demand another trial herein and give notice of their demand for another trial, which is as follows:

In the District Court of Wyandotte County, Kansas, 10th Judicial District.

GEORGE W. TOURTELOTTE and GEO. P. ALLCUT, Plaintiffs,
vs.
CHARLES WILKINS, JNO. SPERING, WILLIAM WILLIS, NICHOLAS MCALPINE, and JAMES M. MASON, Defendants.

Said plaintiffs demand another trial herein and that the judgement in this case this day rendered against them be vacated because the action is for the recovery of real property and only one trial has been had.

GEORGE TOURTELOTTE AND
GEO. P. ALLCUT,
By PRATT, BRUMBACK AND FERREY,
Attorneys for Plaintiffs.

On consideration the court finds that the allegations of said notice are true and vacates the judgement herein rendered at this term in favor of defendants and against plaintiffs and vacates such judgement, and this action shall stand for trial at the next term of this court.

Be it remembered that on the 13th day of April, 1880, the defendants filed their motion for leave to file supplemental answer herein in words and figures following:

In the District Court of the 10th Judicial District of the State of Kansas in and for Wyandotte County, Kansas.

GEORGE W. TOURTELOTTE and GEO. P. ALLCUTT, Plaintiffs,
vs.
CHARLES WILKINS, JOHN SPERLING, WILLIAM WILLIS, NICHOLAS MCALPINE, JAMES M. MASON, Defendants.
No. 2547.

23 Now comes the defendants and show to the court that on the 11th day of March, 1880, and since the commencement of this action that they purchased the interest of Jennie M. James, S. E.

James, Virginia James, Solomon James, and Annie James, heirs-at-law of and representatives of the late David E. James, deceased, in and to the real estate which is the subject of this action, and obtained a deed of conveyance of their said tititle thereto, duly executed and delivered to the defendant N. McAlpine herein, which said deed was recorded in the office of the register of deeds of said county on the said 11th day of March, 1880, in Book of Deeds Number 9, page 9.

And said defendants ask leave of court to file the proper supplemental pleading or answer herein, setting up the same under the provisions of section number 144 of the Code of Civil Procedure, Kansas Statutes.

J. M. MASON,
Attorney for Defendants.

Filed April 13th, 1880.

G. W. BETTS, *Clerk.*

Be it further remembered that on the 16th day of April, 1880, the above motion was by the court sustained, and the leave was granted by said court to defendants to file such suppplemental answer on or before May 1st, 1880, and ten (10) days thereafter *was* given plaintiffs to plead thereto, and cause was continued.

Be it further remembered that afterwards and in conformity with the order of the court above set forth and on the 22nd day of April, 1880, defendants filed their supplemental answer in words and figures following, to wit:

GEORGE W. TOURTELOTTE and GEORGE P. ALCUTT, Plaintiffs,
vs.
CHARLES WILKINS, JOHN SPERING, WM. WILLIS, NICHOLAS MCALPINE, and JAMES M. MASON, Defendants. } No. 2547.

Now comes the defendants and for further and supplemental answer say—

I. That on the 11th day of March, 1880, the defendant N. McAlpine, under whom all the above defendants derive such title and possession as they have and under whom all said other defendants claim, purchased all the right, title, and interest of Jennie M. James, Lewellen E. James, Solomon James, Virginia James, and Annie James, sole heirs and legal representatives of David E. James, deceased, in and to the property in controversy herein, which said purchase was witnessed by a deed of conveyance made by the said parties named James unto said N. McAlpine on the date above named.

That said deed of conveyance was made after this suit was commenced and was duly recorded on the date above named in the office of the register of deeds in Wyandotte county, Kansas.

That by reason of the premises the said defendant N. McAlpine and the defendants under him, according to their right, became

vested with all the right, title, and interest of said parties named James, whatever the same may be.

II. Defendants say that on the 29th day of July, 1879, they purchased of J. C. Douglass, as attorney-in-fact for I. C. Richards, the holder and owner of a tax title upon the lands in controversy herein, all the right, title, and interest of said Richards and his wife, H. S. Richards, in and to the lands in controversy herein, and obtained from said Richards and his wife, H. S. Richards, a deed of
24 conveyance for said lands, dated as aforesaid, which said conveyance contained the name of said N. McAlpine as grantee and was duly executed, acknowledged, and delivered to said McAlpine.

By reason whereof all the right, title, and interest of said Charles I. Richards in and to the lands in controversy herein passed to the defendant N. McAlpine and the other defendants herein according to their rights.

And defendants hereby give notice on the record that said conveyance will be used in evidence on the trial of this case and the defendants will urge the titles acquired thereunder in defense of this suit.

JAMES M. MASON,
Attorney for Defendants.

Filed April 22nd, 1880.

And the said plaintiffs afterwards, on the 10th day of May, 1880, according to said order of April 16th, 1880, filed their reply to the said supplemental answer of defendants filed April 22nd, 1880, and joined issues therein in words and figures following, to wit:

In the District Court of Wyandotte County, Kansas, in the 10th Judicial District.

GEORGE W. TOURTELOTT and GEO. P. ALLCUTT, Plaintiffs,
vs.
CHARLES WILKINS and Others, Defendants.

For reply to the further and supplemental answer of defendants filed herein April 22nd, 1880, said plaintiffs deny each and every allegation thereof, and also deny that said Jennie M. James, Lewellen E. James, Solomon James, Virginia James, C. I. Richards and wife have ever had and also that any or either of them have ever had any right, title, interest, or estate to or in the lands sued for.

Plaintiffs therefore pray judgement as prayed for in their petition.

PRATT, BRUMBACK AND FERREY,
Attorneys for Plaintiffs.

Filed May 10th, 1880.

G. W. BETTS, *Clerk.*

The parties waived a trial by jury and tried the case to the district court of Wyandotte county, Kansas, and the judge of that court made a special finding of facts and of law on December 29, 1881, at the December term, A. D. 1881, and then rendered a judgement in favor of plaintiffs for recovery of the lands sued for.

The defendants thereupon appealed from such judgement to the supreme court of Kansas, and that court passed on the case, its opinion being reported in 28 Kansas Reports, page 825 and following, and in 29 Kansas Reports, page 513 and following.

25 THE STATE OF KANSAS, }
Tenth Judicial District, Wyandotte County. }

At a session of the district court, sitting within and for the county of Wyandotte, begun and held in the city of Wyandotte and in said county on the 2nd day of April, 1883, as by statute required—there being present Hon. W. R. Wagstaff, judge of said judicial district, and Thomas B. Bowling, sheriff, and L. C. Trickey, clerk of the district court of said county—the following proceedings are had:

MONDAY, *April 2nd*, 1883.

GEORGE W. TOURTELOTTE and GEORGE P. ALCUTT, Plaintiffs,
vs.
CHARLES WILKINS, JOHN SPERING, WM. WILLIS, N. McAlpine, James M. Mason, and Annie Mason, Defendants. } No. 2547.

Now, on this day, comes the defendants' attorney and asks the court for an order of the court to enter the mandate of the supreme court in above-entitled cause upon the journal herein; which said order was by the court granted and cause continued.

Supreme Court, State of Kansas, *ss:*

The State of Kansas to the district court within and for the county of Wyandotte, in the State of Kansas, Greeting:

Whereas, in a certain civil action lately pending before you, wherein George W. Tourtelotte and George P. Alcutt were plaintiffs and Charles Wilkins, John Spering, William Willis, Nicholas McAlpine, James M. Mason, and Annie Mason were defendants, a judgement was rendered by you against the said defendants, on a transcript of which judgement and record said defendants prosecuted a petition in error in the supreme court *wherein* and for the State of Kansas; and whereas, at the July term of said supreme court, A. D. 1882, on consideration of said petition in error, it was ordered and adjudged by the said supreme court that the cause be remanded to the district court with the instruction that if within such reasonable time as the district court or judge shall prescribe the sheriff's return on the attachment orders shall be amended in accordance with the opinion herewith transmitted, then the judgement of the court below shall be affirmed with costs, but if, on the other hand, such amendment cannot be obtained, then the judgement of the court below shall be reversed and the cause stand for a new trial;

And whereas, at the January term of said supreme court, A. D. 1883, on consideration of a motion for a rehearing of this cause, it was

ordered and adjudged by the said supreme court that the said motion for a rehearing be allowed, and that the judgement of the court heretofore entered herein be vacated and set aside, and that the judgement of the court below be reversed and the cause be remanded for a new trial:

You are therefore commanded that without delay you cause execution to be had of the said judgement of the supreme court according to law, the said petition in error to the contrary notwithstanding.

Witness my hand and the seal of the supreme court affixed hereto, at my office, in the city of Topeka, on the 8th day of March, A. D. 1883.

[SEAL.] C. J. BROWN,
Clerk of the Supreme Court.

26 THE STATE OF KANSAS, } ss:
Tenth Judicial District, County of Wyandotte, }

At a session of the district court, sitting within and for the county of Wyandotte, begun and held at the court-house, in the city of Wyandotte, in said county, on the 3rd day of December, 1883, as by statute required—there being present Hon. W. R. Wagstaff, judge of the said judicial district, and Thomas B. Bowling, sheriff, and L. C. Trickey, clerk of the district court of said county—the following proceedings are had:

SATURDAY, *December 15th*, 1883.

GEORGE W. TOURTELOTT *et al.*
vs.
CHARLES WILKINS *et al.* } No. 2547.

Said defendants having heretofore filed their petition for removal of this cause to the circuit court of the United States for the district of Kansas, said bond and sureties thereon are approved, and it is ordered that the court proceed no further herein and that this cause be removed to said circuit court.

And the clerk of this court is hereby ordered to make and transmit to said circuit court, as required by law, the record in said cause.

THE STATE OF KANSAS, } ss:
Tenth Judicial District, Wyandotte County, }

At a session of the district court, sitting within and for said county of Wyandotte, begun and held at the court-house, at the city of Wyandotte, in said county, on the 6th day of July, 1885, as by statute required—there being present Hon. W. R. Wagstaff, judge of the said judicial district, and James Furgnoon, sheriff, and L. C. Trickey, clerk of the district court of said county—*and* the following proceedings are had:

TUESDAY, *July 7th*, 1885.

G. W. TOURTELOTT *et al.* vs. CHARLES WILKINS *et al.* } No. 2547.

At this day the order of circuit court remanding the cause is spread on journal of this court as follows, to wit:

UNITED STATES OF AMERICA, *District of Kansas*, } *ss:*

At a term of the circuit court of the United States of America for the district of Kansas begun and held at the city of Leavenworth, in said district, on Monday, the first day of June, 1885, proceedings were had and appear of record in words and figures following, to wit:

TUESDAY, *June 9th*, 1885.

GEORGE W. TOURTELOTT and GEORGE P. ALCUTT, Plaintiffs, vs. CHARLES WILKINS, JOHN SPERING, WILLIAM WILLIS, NICHOLAS McALPINE, JAMES M. MASON, Defendants. }

This day the motion of said plaintiff- filed June 6th, 1885, to remand this suit to the State court came on for hearing, and the court, on consideration thereof and of the record herein, sustained said motion and remands the suit to the district court of Wyandotte county, Kansas, from which court it was removed to this court, and it is considered and adjudged that said Nicholas McAlpine and James M. Mason pay all costs made in this court and that execution thereof issue against said McAlpine and Mason.

27 MONDAY, *July 20th, A. D.* 1885.

GEORGE W. TOURTELOTT *et al.* vs. CHARLES WILKINS *et al.* } No. 2547.

At this day came Jefferson Brumback, attorney for plaintiffs, and James M. Mason, attorney for defendants and interpleaders, and now in open court all of these parties expressly waives a jury in the trial of this cause.

Be it remembered that on the 26th day of August, 1885, the plaintiffs filed their motion for change of venue to some other county, on the ground that the judge of the district court is disqualified to sit and preside at the trial of said cause; which said motion is in words and figures following, to wit:

STATE OF KANSAS,
Wyandotte County, Tenth Judicial District.

G. W. TOURTELOTT *et al.*, Plaintiffs,
vs.
CHARLES WILKINS *et al.*

Motion.

And now comes the plaintiff- above named and moves the court to change the venue of this action to some other judicial district in the State of Kansas, because the judge of this court is disqualified to sit in this cause for reasons set forth in the affidavit herewith filed and which is made part of this motion.

PRATT, BRUMBACK AND FERREY AND
CHAS. W. BLAIR, *Attorneys for Plaintiffs.*

Filed August 26th, 1885.

L. C. TRICKEY, *Clerk.*

Be it remembered that on the 26th day of August, 1885, the plaintiffs filed in support of the above motion for change of venue the following affidavit, which was made a part of said motion, which is in words and figures following, to wit:

In the District Court of the Tenth Judicial District of the State of Kansas in and for the County of Wyandotte.

GEORGE W. TOURTELOTT and GEO. P. ALCUTT, Plaintiffs,
vs.
CHARLES WILKINS, JOHN SPERING, WILLIAM WILLIS, NICHOLAS McALPINE, James M. Mason, and Annie Mason, His Wife, Defendants.

STATE OF KANSAS,
Jackson County, } *ss:*

George Tourtelotte, being duly sworn, deposes and says that he has bought from his coplaintiff all of his interest in the land which is the subject of this suit, and he is now the sole and exclusive owner thereof; that some weeks ago a jury was waived in this suit, and it was agreed that the same should be tried by the court, but the affiant avers that since that time he has become satisfied from observations that he has made and from events that have occurred that he cannot have a fair and impartial trial of this cause in this court and before the judge thereof.

Affiant states that he believes that the Hon. W. R. Wagstaff is prejudiced against this plaintiff and in favor of the defendants in this action, and is therefore disqualified to sit in the case.

28 Affiant further states that in former stages of the litigation of this cause and in other causes involving some of the same questions and facts as those herein involved the judge of this court has formed, rendered, and announced opinions and judgments

which would prevent him from giving a fair and impartial consideration of the questions arising in this cause, and he is therefore disqualified to sit therein.

Affiant further states that the said judge has recently tried to a jury in this court a suit wherein the defendants in this action were plaintiffs and Teresa Snyder was defendant, and that said cause involved many of the questions of law and of fact involved in this suit, and that in said suit the said judge formed and expressed opinions adverse to the interests of this affiant, and has therefore prejudiced his case in another action to which he was not a party.

Affiant further states that in said last-mentioned suit the question of the sufficiency of certain bankrupt proceedings came up, and the same question is an important one in this cause, the plaintiff herein holding and averring that said proceedings were and are of no effect so far as the title to the land in controversy herein is concerned, and that said judge decided in said case of Mason *vs.* Snyder that said proceedings were and are valid and sufficient to convey the land covered thereby, thus prejudging against him a part of this affiant's cause.

Affiant further states that in said decision the said judge not only held said bankrupt proceedings to be valid, but also announced that all parties to the controversy agreed and admitted that the same were valid and binding, whereas, in truth and in fact, neither this plaintiff nor his counsel ever so agreed or admitted.

Affiant respectfully submits that, for the reasons above stated, the honorable judge is disqualified to sit in this cause.

GEORGE W. TOURTELOTTE.

Subscribed and sworn to before me this 26th day of August, 1885.

[SEAL.] J. P. DANA,
Notary Public.

My commission expires September 12th, 1886.

Filed Aug. 26th, 1885.

L. C. TRICKEY, *Clerk.*

WEDNESDAY, *August 29th, A. D.* 1885.

G. W. TOURTELOTTE *et al.*
vs.
CHARLES WILKINS *et al.* } No. 2547.

This day this cause came on to be heard, on the motion of the plaintiffs for a change of venue supported by affidavit, and was argued by counsel, whereupon the court finds that the judge thereof is disqualified to sit further in this cause because he has strong and decided convictions upon many of the questions of law and fact involved herein, resulting from former trials of portions of this cause upon motions, &c., and from trials of other causes involving many of the questions that will arise herein.

It is therefore ordered that the motion be granted for the reasons above stated; that the venue be changed to the district court of

Shawnee county, and that the cause be tried there, and that the clerk of this court certify the proceedings and papers herein at once to said district court of Shawnee county; to all of which rulings and decisions of the court the defendants, by their attorneys, duly excepted and except.

The foregoing order was made by the district court of Wyandotte county, Kansas, and by Judge W. R. Wagstaff, holding such court, and thereupon afterwards the clerk of said district court of Wyandotte county complied with said order of August 26th, A. D.
29 1885, on his part, and in proper time duly certified the proceedings and papers in said district court of Shawnee county, and the same were duly filed in said last-mentioned court October 15, 1885, and in the clerk's office thereof, which were all then duly marked, filed by the clerk of the said last-mentioned court.

Be it further remembered that thereupon, to wit, on the 28th day of June, 1886, this cause came on regularly to be heard, it being the April term of the district court of Shawnee county, in and for the third judicial district of the State of Kansas, upon the issues joined by above pleadings filed by plaintiffs and defendants. The plaintiffs were represented by Messrs. Pratt, Brumback and Ferry, attorneys, and Charles W. Blair, and the defendants by James M. Mason, judge; John W. Day and N. Cree, attorneys.

And thereupon, a jury being waived by the parties, the above cause was tried to the court without a jury.

And thereupon the plaintiffs to sustain the issues on their part offered evidence as follows, to wit:

First. A patent from the United States of America to Silas Armstrong, dated July 13th, 1857, recorded in Book "1," page 345, of the records of Wyandotte county, Kansas; which patent is in words and figures as follows, to wit:

Copy of Patent.

THE UNITED STATES OF AMERICA:

To all — whom these presents shall come, Greeting:

Whereas by the fourteenth article of the treaty between the United States of America and the Wyandotte nation of Indians, made and concluded at Upper Sandusky, in the State of Ohio, on the seventeenth day of March, one thousand eight hundred and forty-two, as ratified on the fifth day of October, one thousand eight hundred and forty-two, the United States agreed to grant to Silas Armstrong one section of land of six hundred and forty (640) acres out of any lands west of the Mississippi river set apart for Indian use not already claimed or occupied by any person or tribe;

And whereas by the ninth article of the treaty with the same tribe, made and concluded at the city of Washington on the thirty-first day of January, one thousand eight hundred and fifty-five, it is stipulated and agreed that each of the individuals to whom reservations were granted by the fourteenth article thereof of the treaty of March seventeenth, one thousand eight hundred and forty-two,

or their heirs or legal representatives shall be permitted to select and locate said reservations on any Government lands west of the States of Missouri and Iowa, subject to pre-emption and settlement, said reservations to be patented by the United States in the name of the reservees as soon as practicable after the selections are made.

2. And it is declared in said article that "the reservees, their heirs or proper representatives, shall have unrestricted right to sell and convey the same whenever they may think proper, but in cases where any of said reservees may not be sufficiently prudent and competent to manage their affairs in a proper manner, which shall be determined by the Wyandotte council, or where any of them have died leaving minor heirs, the said council shall appoint proper and discreet persons to act for such incompetent persons and minor heirs in the sale of the reservations and the custody and management of the proceeds thereof. The persons so appointed have full authority to sell and dispose of the reservations in such cases and to make and execute a good and valid title thereto."

And whereas it appears from a return dated the eighteenth
30 (18th) day of February, one thousand eight hundred and fifty-seven, from the office of Indian affairs to the General Land Office, that there have been selected and approved as the reserve of the said Silas Armstrong, under the treaty stipulations above mentioned, the following-described tracts, to wit:

Lot number one (1) of fractional — ten (10), containing ninety-six (96) acres and eighty-nine hundredths ($\frac{89}{100}$) of an acre; lot number one (1) of fractional section eleven (11), containing one hundred (100) acres and eighty-one hundredths ($\frac{81}{100}$) of an acre; lot number one (1) of fractional section fourteen (14), containing seventy-seven (77) acres; the northeast fractional quarter ($\frac{1}{4}$) of section fifteen (15), containing fifty-three hundredths ($\frac{53}{100}$) of an acre; lot number one (1) of fractional section twenty-two (22), containing eighty (80) acres and seven hundredths ($\frac{7}{100}$) of an acre, and lot number one (1) of fractional section twenty-three (23), containing one hundred and fifteen (115) acres and twenty-eight hundredths ($\frac{28}{100}$) of an acre, all in township eleven (11) south, of range twenty-five (25) east, of the sixth (6th) principal meridian in the Territory of Kansas.

Now, know ye that the United States of America, in consideration of the premises and in conformity with the provisions as above recited of the aforesaid treaties, have given and granted and by these presents do give and grant unto the said Silas Armstrong and to his heirs the tracts of land above described; to have and to hold the said tracts of land, with the appurtenances, unto the said Silas Armstrong and to his heirs and assigns forever in conformity with the provisions of the treaties aforesaid.

In testimony whereof I, James Buchanan, President of
[SEAL.] the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereto affixed.

Given under my hand, at the city of Washington, this thirteenth day of July, in the year of our Lord one thousand eight hundred

and fifty-seven, and the Independence of the United States the eighty-second.

By the President:

JAMES BUCHANAN.
By G. H. JONES, *Sec'y.*

J. N. GRANGER,
Recorder of the General Land Office.

Recorded vol. II, pages 324, 325, 326.
Recorded January 24th, A. D. 1866, at 11 a. m.

JAMES A. CRUISE,
Register of Deeds.

31 The plaintiffs next offered in evidence a deed of conveyance from Silas Armstrong and wife to David E. James, conveying an undivided three-eighths (3/8) of the land lying north of Turkey creek and between the State line and the Missouri and Kansas rivers, and other lands, dated July 18th, 1859, recorded in Book "A," page 83, which said deed was read in evidence and is in words and figures following:

Copy of Deed from Silas Armstrong and Wife to David E. James.

Know all men by these presents that we, Silas Armstrong and Seninda, his wife, of the county of Wyandotte and Territory of Kansas, for diverse good considerations, namely, the settling, quieting, and perfecting forever the title to that certain tract of land situated in the fork of the Kansas and Missouri rivers, known as the Wyandotte reserve number one (1), and the giving up and yielding of quiet and peaceable possession of said tract of land to said Armstrong, and also the payment to us of the sum of four thousand and five hundred dollars ($4,500) by David E. James, of the county and Territory aforesaid, the fulfillment of which and the receipt of which sum of money we do hereby acknowledge, do bargain, grant, sell, and convey unto the said David E. James, his heirs and assigns forever, the following-described real estate, lying and being in the county of Wyandotte and Territory of Kansas, namely: one undivided three-eighths (3/8) of that tract of land situated and lying in the forks of the Kansas and Missouri rivers north of the old bed of Turkey creek and bounded by said old bed of Turkey creek on the south, on the east by the Missouri State line, on the north by the Missouri river, and on the west by the Kansas river, and consisting of fractional sections number ten (10), number eleven (11), numbers fourteen (14) and fifteen (15), according to the original survey of said Wyandotte reserve and which is now on file in the proper land offices of the United States Government, the said undivided one three-eighths (3/8) containing about ninety (90) acres, more or less, with one undivided three-eighths (3/8) of the ferry privilege adjoining said land on the east side of the Kansas river.

And also one moiety of that tract or parcel of land situate and lying south of the old bed of Turkey creek and consisting of frac-

tional sections number twenty-two (22), number twenty-three (23), and that portion of number fourteen (14) situated and lying south of the old bed of Turkey creek, according to the aforesaid original survey of said Wyandotte reserve number one (1), and all consisting of about two hundred and thirty (230) acres, according to said original survey, namely, one forty (40) acre lot situate, lying, and bounded as follows: Beginning at a point on the south side of the old bed of the Turkey creek where it intersects the boundary lines between the Territory of Kansas and the State of Missouri, thence running south on said boundary line to a point on said boundary line where an east and west line runs from said point to a point on the right bank of the Kansas river, sufficiently distant from the place of beginning to include said forty (40) acres by thence running down stream with the meanders of the right bank of the Kansas river to a point on the right bank of the Kansas river where the old bed of Turkey creek enters the Kansas river; thence following the old bed of Turkey creek to the place of beginning, so as to take in and complete the said forty (40) acres.

Also one other forty (40) acre lot situate, lying, and bounded as follows, namely: Beginning at the intersection of the boundary line between the Territory of Kansas and the State of Missouri with the north boundary of the Shawnee reserve, thence north on the State line, variation eleven (11) degrees east, distant eight hundred and twenty-eight (828) feet to a post corner; thence west, variation eleven (11) degrees ten (10) minutes east, a distance of two thousand one hundred and four (2,104) feet to a post corner; thence south, variation ten (10) degrees ten (10) minutes east, a distance of eight hundred and twenty-eight (828) feet to a post corner; thence east, variation eleven (11) degrees ten (10) minutes east, a distance of two thousand one hundred and four (2,104) feet to the place of beginning, containing forty (40) acres, straight measure.

32

And the remainder or residue of said one moiety of said tract or parcel of land aforesaid.

We do hereby grant, bargain, sell, and convey to said James aforesaid in one undivided portion or interest of and in said remainder or residue of said tracts or parcels of lands situate and lying south of the old bed of Turkey creek as contained in the aforesaid original survey of the Wyandotte reserve number one (1), so that said undivided interest will, when added to the two forty (40) acres lots above conveyed, include one moiety of the whole tract south of the old bed of Turkey creek; all of said tracts, parcels, and undivided portions of said land being in township eleven (11) south of base line, range twenty-five (25) east, of the sixth principal meridian, Kansas Territory; to have and to hold said tracts, parcels, and undivided portions of said real estate, with all the appurtenances thereunto belonging or in anywise appertaining, unto him, the said David E. James, his heirs and assigns forever.

In testimony whereof we have hereto set our hands and seals this

eighteenth day of July, A. D. one thousand eight hundred and fifty-nine.

SILAS ARMSTRONG. [SEAL.]
ZELINDA ARMSTRONG. [SEAL.]

Signed, sealed, and acknowledged in presence of—
CHARLES S. GLICK.
CARRIE VAN FOSSEN.

THE TERRITORY OF KANSAS, } ss:
County of Wyandotte, }

Be it remembered that on the 23rd day of July, A. D. one thousand and eight hundred and fifty-nine, before me, Charles S. Glick, a notary public within and for the county aforesaid, personally appeared Silas Armstrong and Zelinda Armstrong, his wife, who are personally known to me to be the same persons whose names are subscribed to the within and foregoing deed as having executed the same as parties thereto, and severally acknowledged the same to be their act and deed -or the purposes therein mentioned, and the said Zelinda Armstrong, being by me first made acquainted with the contents thereof and on an examination separate and apart from her husband, acknowledged and declared that she executed the said deed and relinquished her dower in said lands and tenements therein mentioned voluntarily, freely, and without compulsion or under the influence or duress of her husband.

Witness my hand and official seal the day and year last above mentioned.

[SEAL.] CHARLES S. GLICK,
Notary Public, Wyandotte County, Kansas.

Recorded July 23rd, A. D. 1859, at 12.30 p. m.
V. J. LANE, *Register of Deeds,*
Per JAMES A. CRUISE, *Deputy.*

33 Plaintiff- next offered in evidence a record in partition in the district court of Wyandotte county. Judge Brumback, attorney for plaintiff-, stated:

"We will call this, your honor, the Ewing partition. Thomas Ewing acquired an undivided interest in this land and commenced partition proceedings in January, 1867, against David E. James and the heirs of Silas Armstrong, including quite a number of other persons and Henry E. Seeger. These proceedings resulted in partition, which was approved by the court in October, 1867. The final order approving the partition was made in October, 1867, and there is a full transcript of these proceedings, including the plat, which plat is a part of the record. In that connection there may be considered in evidence also this large plat. This is a transcript of the record of the case out of the record book."

The defendants objected to the introduction of this evidence as being incompetent, irrelevant, and immaterial. The court overruled the objection of the defendants and admitted the evidence; to which ruling of the court the defendants at the time excepted.

Said record in partition so admitted by the court was in words and figures as follows, to wit:

THE STATE OF KANSAS,
First Judicial District, County of Wyandotte.

Pleas before the Hon. David J. Brewer, judge of the first district court of the State of Kansas, sitting within and for the county of Wyandotte, at the session thereof began and held at the courthouse, in the city of Wyandotte, in said county, on the first Monday in October, 1867, it being the 7th day of said month.

Be it remembered that heretofore, to wit, on the 23rd day of January, A. D. 1867, Thomas Ewing, Jr., Sarah Calhoun, Seth J. Calhoun, Martha Calhoun, Susan Parker, Elizabeth Calhoun, and Mary Calhoun and James Calhoun, minors, by Sarah Calhoun, their guardian *ad litem*, plaintiffs, filed in the clerk's office of the court aforesaid a petition in partition against William Weer, Thomas H. Swope, Silas Armstrong, Winfield S. Armstrong, Tabitha N. Vedder, Catherine D. Shaffenberg, Caroline H. Vanfossem, Maynard C. Armstrong, McIntyre Armstrong, Elizabeth Armstrong, Antoinette Armstrong, Naomia Armstrong, Zelinda Armstrong, David E. James, George B. Wood, Luther H. Wood, Henry R. Seeger, Lawrence P. Graham, the Union Pacific Railway Company, Eastern divisions; A. B. Bartlett and Silas Armstrong, administrators of the estate of Silas Armstrong, deceased, and A. H. Bartlett, administrator of the estate of John Calhoun, deceased, defendants, in words and figures following, to wit:

STATE OF KANSAS,
First Judicial District, Wyandotte County.

THOMAS EWING, JR., SARAH CALHOUN, SETH J. CALHOUN, MARTHA Calhoun, Susan Parker, Elizabeth Calhoun, and Mary Calhoun and James Calhoun, Minors, by Sarah Calhoun, Their Guardian *ad Litem*, Plaintiffs,

vs.

WILLIAM WEER, THOMAS H. SWOPE, SILAS ARMSTRONG, WILFIELD S. Armstrong, Tabitha N. Vedder, Catherine D. Shaffenberg, Caroline M. Van Fossem, Maynard C. Armstrong, McIntyre Armstrong, Elizabeth Armstrong, Antoinette Armstrong, Naomie Armstrong, Delinda Armstrong, David E. James, George B. Wood, Luther H. Wood, Henry R. Seeger, Lawrence P. Graham, The Union Pacific Railway Company, Eastern Division; A. B. Bartlett and Silas Armstrong, Administrators of the Estate of Silas Armstrong, Deceased, and A. B. Bartlett, Administrator of the Estate of John Calhoun, Deceased, Defendants.

34 *Petition in Partition.*

To the honorable district court of the first judicial district of the State of Kansas, sitting in and for Wyandotte county:

Your petitioner-, Thomas Ewing, Jr., who resides in the city of Washington, in the District of Columbia, and Sarah Calhoun, Seth

J. Calhoun, Martha Calhoun, Elizabeth Calhoun, and Mary Calhoun and James Calhoun, who sue by Sarah Calhoun, their guardian *ad litem*, who resides in the city and county of Leavenworth and State of Kansas, and Susan Parker, who resides in the city of Atchison and State of Kansas, respectfully show to your honorable court that your petitioners above named and William Weer, who resides in the city of Wyandotte, in the State of Kansas, and Thomas H. Swope, who resides in St. Louis, in the State of Missouri, and Silas Armstrong and Winfield S. Armstrong, Tabitha N. Vedder, Elizabeth Armstrong and Zelinda Armstrong, Maynard C. Armstrong, McIntyre Armstrong, Antoinette Armstrong, Naomie Armstrong, who severally reside in the city and county of Wyandotte and State of Kansas, and Catherine D. Shaffenberg, who resides in Denver, in the Territory of Colorado, and Caroline M. Van Fossem, who resides at Fort Scott, in the county of Bourbon and State of Kansas, and David E. James, who resides at Adrian, in the State of Michigan, and George B. Wood, who resides in the city of Wyandotte aforesaid, and Henry R. Seeger and Luther H. Wood, who resides in Kansas City, in the State of Missouri, and Lawrence P. Graham, whose place of residence is unknown to your petitioners, and The Union Pacific Railway Company, Eastern divisions, a corporation existing under the laws of the State of Kansas, defendants above named, are the owners and tenants in common of the following-described real estate, situate, lying, and being in the county of Wyandotte and State of Kansas, bounded and described as follows, to wit:

"All that parcel of land lying in the forks of the Missouri and Kansas rivers and between the Missouri State line and the Kansas river as lies north of Turkey creek, containing about two hundred and fifty (250) acres, more or less," and that your petitioners are the owners in fee thereof in the following proportions—that is to say:

Your petitioner Thomas Ewing, Jr., is the owner of an undivided twenty-two and one-half (22½) acres, and your petitioners Sarah Calhoun, Mary Calhoun and James Calhoun, Seth J. Calhoun, Martha Calhoun, Susan Parker, Elizabeth Calhoun are jointly the owners of an undivided one-eight (⅛) of said land, less (10) acres thereof decreed by your honorable court to the defendant Lawrence P. Graham, and that the defendants William Weer, Thomas H. Swope, Silas Armstrong, Winfield S. Armstrong, Tabitha N. Vedder, Catherine D. Shaffenberg, Caroline M. Van Fossem, Maynard C. Armstrong, McIntyre Armstrong, Antoinette Armstrong, Naomi Armstrong, Elizabeth L. Armstrong, Zelinda Armstrong, David E. James, George B. Wood, Luther H. Wood, Henry R. Seeger, Lawrence P. Graham, The Union Pacific Railway Company, Eastern division, are jointly the owners of the remainder of the said land, but in what particular parts and proportions they severally own and are seized of these petitioners are not informed and cannot state, except as to Lawrence P. Graham, who owns an undivided ten (10) acres thereof.

And your petitioners further show that your petitioner Sarah Calhoun is the widow of John Calhoun, deceased, and that your petitioner- Seth J. Calhoun, Martha Calhoun, Susan Parker, whose maiden name was Susan Calhoun, Elizabeth L. Calhoun, Mary Calhoun, and James Calhoun are the children and heirs-at-law of said John Calhoun, deceased, and as such are entitled to all the right, title, interest said John Calhoun, deceased, had in his lifetime in and to said parcel of lands, which was an undivided one-eighth ($\frac{1}{8}$) part thereof in fee, less the ten (10) acres now owned by the said Lawrence P. Graham, defendant.

And your petitioners further show that *on* or about the
35 month of April, 1866, letters of administration were by the probate court of Wyandotte county aforesaid issued to the defendant A. B. Bartlett, and your petitioners further show that at the time said letters were so issued the estate of said John Calhoun, deceased, owed no debts of any manner or nature whatsoever, nor is there now any debts owing by the said estate, and said A. B. Bartlett has no interest therein as such administrator.

And your petitioners further show that Silas Armstrong, late of said county of Wyandotte, deceased, in his lifetime owned an interest in fee in a part of said real estate, and that the defendants A. B. Bartlett and Silas Armstrong are the administrators duly appointed of the estate of said Silas Armstrong, deceased.

And your petitioners therefore pray your honorable court for a judgement and decree that the interests of your petitioners in and to said real estate be set apart and partitioned to them in the following parcels and proportions—that is to say:

To your petitioner Thomas Ewing, Jr., an undivided twenty-two and one-half ($22\frac{1}{2}$) acres thereof of average value, and to your petitioners Sarah Calhoun, Seth J. Calhoun, Martha Calhoun, Susan Parker, Elizabeth Calhoun, Mary Calhoun, and James Calhoun jointly an undivided one-eighth ($\frac{1}{8}$) part thereof in value, less ten (10) acres of average value or such proportions of said ten (10) acres as may now remain of said lands, and for such other judgement, order, and decree as to the court may seem just, meet, and proper in the premises.

T. A. HURD,
Attorney for Petitioners.

And afterwards, on the 7th day of February, A. D. 1867, the said plaintiff- filed in the clerk's office aforesaid the following:

36 *Notice of Partition.*

STATE OF KANSAS,
First Judicial District, Wyandotte County.

THOMAS EWING, JR., SARAH CALHOUN, SETH J. CALHOUN, MARTHA Calhoun, Susan Parker, Elizabeth Calhoun, and Mary Calhoun and James Calhoun, Minors, by Sarah Calhoun, Their Guardian *ad Litem*, Plaintiffs,

vs.

WILLIAM WEER, THOMAS H. SWOPE, SILAS ARMSTRONG, Winfield S. Armstrong, Tabitha N. Vedder, Catherine D. Shaffenberg, Caroline M. Van Fossem, Maynard C. Armstrong, McIntyre Armstrong, Elizabeth Armstrong, Antoinette Armstrong, Naomie Armstrong, Zelinda Armstrong, David E. James, George B. Wood, Luther H. Wood, Henry R. Seeger and Lawrence P. Graham, The Union Pacific Railway Company, Eastern Division; A. B. Bartlett and Silas Armstrong, Administrators, &c., of Silas Armstrong, Deceased, and A. B. Bartlett, Administrator of John Calhoun, Deceased, Defendants.

To the defendants above-named:

You and each of you will take notice that Thomas Ewing, Jr., Sarah Calhoun, Seth J. Calhoun, Martha Calhoun, Susan Parker, Elizabeth Calhoun, and Mary Calhoun and James Calhoun, minors, by Sarah Calhoun, their guardian *ad litem*, have filed their petition in the office of the clerk of the district court of the first judicial district of the State of Kansas, sitting in and for the county of Wyandotte, and that such action is now pending in said court, and that the object and demand of said petition is for the partitioning and setting apart to the said petitioners, Sarah Calhoun, Seth J. Calhoun, Martha Calhoun, Susan Parker, Elizabeth Calhoun, and Mary Calhoun and James Calhoun, jointly the one-eighth ($\frac{1}{8}$) part in value, less ten (10) acres, and to the petitioner Thomas Ewing, Jr., in severalty twenty-two and one-half ($22\frac{1}{2}$) acres of the following-described piece, parcel, or lot of land, situate, lying, and being in the county of Wyandotte and the State of Kansas, to wit:

"All that parcel of land lying in the forks of the Missouri and Kansas rivers and between the Missouri State line and the Kansas river as lies north of Turkey creek, containing two hundred and fifty (250) acres, more or less."

And you will further take notice that application for such partition will be made to the said district court at the next term thereof, to be held in the city of Wyandotte, county aforesaid, and commencing on the first Monday of April, 1867.

T. A. HURD,
Attorney for Plaintiffs.

On which notice there is endorsed:

Received this writ on the 23rd day of January, A. D. 1867, and served the same by delivering to the within-named William Weer,

George B. Wood, Winfield S. Armstrong, A. B. Bartlett, administrator of the estate of Silas Armstrong and John Calhoun, deceased, on the above-named day a true copy of this notice each personally, and also on the 28th day of January, A. D. 1867, I delivered to the cashier of the within-named The Union Pacific Railway Company, Eastern division, there being no chief office in my county, personally a true copy of this notice, and *of* also on the 29th day of January, A. D. 1867, delivered to the within-named Luther H. Wood, Tabitha N. Vedder, Maynard C. Armstrong each personally a true copy of this notice, and also on the 5th day of February, A. D. 1867, I served five (5) copies of this notice on Zelinda Armstrong, mother of the within-named McIntyre Armstrong, Elizabeth Armstrong, Antoinette Armstrong, Naomi Armstrong, minor children of
37 Silas Armstrong, deceased. The within-named Thomas H. Swope, David E. James, Caroline M. Van Fossem, Catherine D. Shaffenberg, Henry E. Seeger, Lawrence P. Graham were not found in my county.

Fees: *Non est*, .60; mileage, $2.00; service, $3.75---------- $6.35

P. I. FERGUSON, *Sheriff*,
By SILAS ARMSTRONG,
Under Sheriff.

I hereby acknowledge receipt of a true copy of the within notice.
SILAS ARMSTRONG.

And at the following April term of said district court, to wit, on the 2nd day of April, A. D. 1867, came the plaintiffs, by their attorneys, T. A. Hurd, Esq., and filed proof of service on the defendants herein by publication in the Wyandotte Commercial Gazette, a newspaper printed in the county of Wyandotte, and which is by the court approved; which proof is in words following, viz:

STATE OF KANSAS, }
County of Wyandotte. }

Richard B. Taylor, being first duly sworn, deposes and says that he is the editor and publisher of the "Wyandotte Commercial Gazette," a newspaper published weekly in the city of Wyandotte, in said county, and of general circulation therein; that a notice, of which the annexed is a true and perfect copy, was published in said newspaper six consecutive weeks, the first publication thereof being on the 26th day of January, A. D. 1867, and the last on the 2nd day of March, A. D. 1867.

R. B. TAYLOR.

Subscribed and sworn to before me this 2nd day of April, A. D. 1867.

W. B. BOWMAN, *J. P.*

Fees by plaintiffs' attorney, R. B. Taylor:
Publication, $21.00; affidavit, .25; stamp---------- $21.25

Notice of Partition.

STATE OF KANSAS,
First Judicial District, County of Wyandotte.

THOMAS EWING, JR., SARAH CALHOUN, SETH J. CALHOUN, MARTHA Calhoun, Susan Parker, Elizabeth L. Calhoun, and Mary Calhoun and James Calhoun, Minors, by Sarah Calhoun, Their Guardian *ad Litem*, Plaintiffs,

vs.

WILLIAM WEER, THOMAS H. SWOPE, SILAS ARMSTRONG, WINFIELD S. Armstrong, Tabitha N. Vedder, Catherine D. Shaffenberg, Caroline M. Van Fossem, Maynard C. Armstrong, McIntyre Armstrong, Elizabeth Armstrong, Antoinette Armstrong, Naomie Armstrong, Zelinda Armstrong, David E. James, George B. Wood, Luther H. Wood, Henry R. Seeger, Lawrence P. Graham, The Union Pacific Railway Company, Eastern Division; A. B. Bartlett and Silas Armstrong, Administrators, &c., of John Calhoun, Deceased, Defendants.

To the defendants above named:

You and each of you will take notice that Thomas Ewing, Jr., Sarah Calhoun, Seth J. Calhoun, Martha Calhoun, Susan Parker, Elizabeth Calhoun, and Mary Calhoun and James Calhoun, minors, by Sarah Calhoun, their guardian *ad litem*, have filed their petitions in the office of the clerk of the district court of the first judicial district of the State of Kansas, sitting in and for the county of Wyandotte, and that such action is now pending in the said court, and that the object and demand of the said petition is for the partitioning and setting apart to the said petitioners, Sarah Calhoun,
38 Seth J. Calhoun, Martha Calhoun, Susan Parker, Elizabeth Calhoun, and Mary Calhoun and James Calhoun, jointly the one-eighth ($\frac{1}{8}$) part in value, less ten (10) acres, and to the petitioner Thomas Ewing, Jr., in severalty, twenty-two and one-half ($22\frac{1}{2}$) acres of the following-described piece, parcel, or lot of land, situate, lying, and being in the county of Wyandotte and State of Kansas, to wit:

"All that parcel of land lying in the forks of the Missouri and Kansas rivers and between the Missouri State line and the Kansas river as lies north of Turkey creek, containing two hundred and fifty (250) acres, more or less."

And you will further take notice that application for such partition will be made to the said district court at the next term thereof, to be held in the city of Wyandotte, county aforesaid, commencing on the first Monday of April, 1867.

T. A. HURD,
Attorney for Plaintiffs.

And thereupon the plaintiffs suggested to the court that since the commencement of this action the defendant William Weer has departed this life, and on their motion it is ordered that leave be given

them to revive this cause as to the said defendant, William Weer, deceased, in the name of Mary J. Wise, sole heir of said William Weer; and it is further ordered that Wm. C. McDowell be, and he is hereby, appointed guardian *ad litem* for Maynard C. Armstrong, McIntyre Armstrong, Elizabeth L. Armstrong, Antoinette Armstrong, and Naomie Armstrong, minor defendants herein, with leave to file answer on or before the fourth day of the present term.

And at the same term of said court, to wit, on the 4th day of April, A. D. 1867, William C. McDowell, guardian *ad litem* as aforesaid, filed his answer as follows, to wit:

THE STATE OF KANSAS,
First Judicial District, Wyandotte County.

THOMAS EWING, JR., *et al.*, Plaintiffs,
vs.
WILLIAM WEER *et al.*, Defendants.

Answer.

Now come Maynard C. Armstrong, McIntyre Armstrong, Elizabeth Armstrong, Antoinette Armstrong, and Naomie Armstrong, infant heirs of Silas Armstrong, deceased, by their guardian *ad litem*, M. C. McDowell, and say they know nothing of the matter set forth in the petition; that they are infants of tender years, and they ask the protection of the court and deny each and every allegation in petition contained.

By M. C. McDOWELL,
Their Guardian ad Litem.

And on said 4th day of April, A. D. 1867, said Mary J. Wise appeared and filed her answer as follows:

THE STATE OF KANSAS,
First Judicial District, Wyandotte County.

THOMAS EWING, JR., *et al.*, Plaintiffs,
vs.
WILLIAM WEER *et al.*, Defendants.

Separate Answer of Mary J. Wise.

Now comes Mary J. Wise, as to whom this suit has been revived by order of court, by M. C. McDowell, her attorney, and for answer to plaintiffs' petition says she is the sole heir-at-law of
39 William Weer, deceased, and by virtue of such heirship says she is the owner of and seized in fee of one undivided one-eighth ($\frac{1}{8}$) part of the premises described in petition and is a tenant in common with all the defendants and plaintiffs who have any legal title to any portions of the same, and she prays the court to set apart to her her said interest in severalty.

MARY J. WISE,
By M. C. McDOWELL,
Her Attorney.

And at the same term, to wit, on the 5th day of April, A. D. 1867, said defendant, David E. James, filed his answer as follows, to wit:

THE STATE OF KANSAS, }
Wyandotte County. }

The District Court of Wyandotte County.

THOMAS EWING, JR., *et al.*, Plaintiffs, }
vs.
WILLIAM WEER *et al.*, Defendants. }

Separate Answer of David E. James.

And now comes the defendant David E. James and for answer to plaintiffs' petition says that he is the owner and seized in fee as a tenant in common of the premises set out and described in the petition of one undivided three-eighths ($\frac{3}{8}$) of the same, less five-eighteenths ($\frac{5}{18}$) of three-eighths ($\frac{3}{8}$) heretofore conveyed to George B. Wood and less three (3) acres and one hundred and fifty thousandths ($\frac{150}{1000}$) of an acre jointly conveyed by defendant and George B. Wood to the Union Pacific Railroad Company, East divisions.

Defendant prays that his interest in the premises may be set apart to him in severalty.

By W. C. McDOWELL,
His Attorney.

And on said 5th day of April, A. D. 1867, said defendant, George B. Wood, filed his answer as follows, to wit:

THE STATE OF KANSAS, }
Wyandotte County. }

In the District Court of Wyandotte County.

THOMAS EWING, JR., *et al.*, Plaintiffs, }
vs.
WILLIAM WEER *et al.*, Defendants. }

Separate Answer of George B. Wood.

Now comes George B. Wood, one of the defendants, and for answer says—

That he is the owner in fee and seized as a tenant in common of an undivided five-eighteenths ($\frac{5}{18}$) of three-eighths ($\frac{3}{8}$) of the premises set out in petition, less a fractional interest in three (3) and one hundred — fifty thousandths ($\frac{150}{1000}$) acres conveyed by David E. James and himself to the railroad company. He prays to have his interest set out to him in severalty.

By W. C. McDOWELL, *Attorney.*

And on the 5th day of April, 1867, said defendant-, Silas Armstrong, Winfield S. Armstrong, Caroline M. Vanfossem, and Zelinda Armstrong, filed their answer as follows, to wit:

40 THE STATE OF KANSAS,
First Judicial District, Wyandotte County.

THOMAS EWING, JR., *et al.*, Plaintiffs,
vs.
WILLIAM WEER *et al.*, Defendants.

Answer.

Now come Silas Armstrong, Winfield S. Armstrong, Catherine D. Shaffenberg, Caroline Van Fossem, and Zelinda Armstrong and jointly answer the petition of plaintiffs. They aver that they are heirs-at-law of Silas Armstrong, deceased, and as such heirs are tenants in common and seized in fee of the interest of Silas Armstrong in his life of the premises described in petition and have, with the infant heirs, who have answered by guardian *ad litem*, and with Tabitha N. Vedder, the title by inheritance of said Silas Armstrong, deceased. They pray the court that the quantity of land which Silas Armstrong in his lifetime owned in the premises may be set off apart to them as tenants in common.

By BARTLETT AND HALE AND
M. C. McDOWELL, *Attorneys.*

And at the same term of said court, to wit, on the 6th day of April, A. D. 1867, came the plaintiffs, by their attorney, T. A. Hurd, Esq., and by leave of the court files the original order of the judge of this court appointing Sarah Calhoun guardian *ad litem* for the said James Calhoun and Mary Calhoun as of the date of the filing of the petition herein, to wit, January 23rd, A. D. 1867; which appointment is as follows:

To the honorable the district court of the first judicial district of the State of Kansas and Hon. D. J. Brewer, judge of said court:

Your petitioner, Sarah Calhoun, respectfully shows that James Calhoun and Mary Calhoun are the minor children and heirs-at-law of John Calhoun, deceased.

That she is the mother of the said James and Mary, and that they as such heirs-at-law are tenants in common with your petitioner in certain real estate situate in the county of Wyandotte and State of Kansas, and that it is for the interest of said minors that they be joined as plaintiffs in a suit for the partition of said real estate and parcel of land.

Your petitioner therefore prays that the said James and Mary have no general guardian, and she therefore prays that she be appointed guardian *ad litem* of said infants for the purpose of prosecuting said suit, she hereby agreeing to be liable for all costs that may be adjudged against them.

SARAH CALHOUN.

STATE OF KANSAS, } ss:
Leavenworth County, }

Sarah Calhoun, being first duly sworn, says that she has heard the within petition read and knows the contents thereof, and that same is true — her own knowledge.

SARAH CALHOUN.

Subscribed and sworn to in my presence and before me this 23rd day of October, 1866.

[SEAL.] L. M. GODDARD,
Notary Public.

I hereby appoint Sarah Calhoun guardian *ad litem* for James Calhoun and Mary Calhoun, minors, for the purpose named in within petition.

Dated January 21st, 1867.

DAVID J. BREWER, *Judge.*

41 And on said 6th day of April, A. D. 1867, said defendant, Lawrence P. Graham, filed his answer as follows, to wit:

In the District Court for the County of Wyandotte, in the State of Kansas.

CALHOUN *et al., Defendants,* }
vs.
—— —— *et als.,* Defendants. }

Answer of Lawrence P. Graham.

Now comes the said defendant, Lawrence P. Graham, and consent that a decree may be taken herein as to his interest in accordance with the terms of the judgement heretofore rendered in said court in the case of the said plaintiffs, William Weer, the defendants, and other defendants therein named.

LAWRENCE P. GRAHAM,
By W. P. GAMBALL,
His Attorney.

And at the same term, to wit, on the 6th day of April, A. D. 1867, said defendant, The Union Pacific Railway Company, filed its answer as follows, to wit:

STATE OF KANSAS, }
First Judicial District, Wyandotte County. }

THOMAS EWING, JR., *et al.*, Plaintiffs, }
vs.
THOMAS H. SWOPE *et al.*, Defendants. }

Partition.

The Union Pacific Railway Company, Eastern Divisions, by its attorney, answers and defends said action and denies that the com-

plainants are seized of said land in their petition mentioned in manner and form, to such extent, and in such proportions as the said petitioners in their said petition have alleged, and this defendant requires strict proof of any right they have.

The right of said defendant in said land is stated in the next paragraph of this answer.

2nd. The said company, further answering, says that William Weer, named in said petition, was seized of one-fourth (¼) of all the lands in the petition mentioned, and with the consent and approval of all the parties interested named in the complaint conveyed a strip of said land to this defendant three hundred and fifty (350) feet wide, one hundred and fifty (150) feet of which lies north and two hundred and fifty (250) feet of which lies south of the center line of this said defendant's railroad track passing through said land on the east side of the Kansas river to the State line of Missouri, containing in all eight and four hundred and thirty-one thousandths (8.431) acres, for which the said railroad company paid the said Weer five thousand dollars ($5,000.00).

And the said railway company further answers and says that the said Thomas H. Swope, being seized of an undivided eighth (⅛) interest in said land in the petition mentioned, for the consideration of four thousand dollars ($4,000) paid him by said railway company, conveyed to said railway company twelve (12) acres of said land in the petition mentioned, agreed to be located at the eastern terminus of the road of said company.

This defendant alleges that the land at and along the eastern terminus of said road and adjacent thereto is not of an aver-
42 age value of the residue of said land to be partitioned, and that the same was purchased with the knowledge of said Swope and Weer for the accommodation of said company, and is necessary to the operation of said road; but if upon inspection said land shall be found to be of more than an average value of the whole tract, said defendant claims and asks that an abatement equal to such increased value shall be deducted from the land remaining to be partitioned to the said Swope.

Defendant further says that said Swope has released and quit-claimed to the defendant all his interest in the land conveyed by said Weer as aforesaid. Defendant asks that a decree may be entered confirming to it the tract conveyed by said Weer, and that the heir of said Weer, Mary J. Wise, be compelled to make good to the other parties interested (if they shall maintain that the said William Weer did not make the aforesaid conveyance by their consent) out of the lands to be partitioned to her.

This defendant asks that the twelve (12) acres conveyed to it by said Swope may be partitioned and set off to said railway company from the land adjacent to that conveyed by said Weer in such form as will best accommodate and promote the interest of the company in its use of the same for railroad purposes, and when so set off to be marked by distinct bounds and decreed to be the absolute property of the defendant, free and clear from any claim of the com-

plainants or of the codefendants or of any person claiming through or under them.

Said defendant makes this their answer a cross-petition against the complainants and the codefendants and pray that they may be required to answer the same and deny, if they can, the matters hereinbefore stated.

And defendant asks for such other and further relief as the nature of the case may require and as shall be agreeable to equity and good conscience.

JOHN K. HALE,
Attorney for Union Pacific Railroad Company, Eastern Divisions.

And at the same term of this court, to wit, on the 8th day of April, A. D. 1867, said plaintiffs filed their reply to the answer of the Union Pacific Railway Company, Eastern divisions, as follows:

STATE OF KANSAS, }
First Judicial District, Wyandotte County. }

THOMAS EWING, JR., SARAH CALHOUN, *et al.*, Plaintiffs,
vs.
THOMAS H. SWOPE, SILAS ARMSTRONG, *et al.*, Defendants. } Case No. 911.

Reply to the Answer of the Union Pacific Railway Company, Eastern Divisions.

And the above-named plaintiffs, for a reply to the answer of the defendant The Union Pacific Railway Company, Eastern divisions, deny generally and specifically each and every allegation of new matter stated and alleged in the said answer.

2nd. For a further reply to the second count of the said defendants' answer deny that at the time mentioned in said answer that William Weer was seized of an undivided one-fourth (¼) part of the lands described in the petition, and deny that said Weer conveyed or pretended to convey or intended to convey to this defendant the strip of land three hundred and fifty (350) feet wide extending across said tract and containing eight and four hundred and thirty-one thousandths (8.431) acres, and deny that these plaintiffs or
43 either of them had any knowledge of any conveyance from said Weer or said defendant Swope and James or any other of the defendants to the said railway company, defendant, and they deny that any such conveyance or conveyances have been made, and they deny generally and specifically each and every other allegation of the said second count of said answer.

T. A. HURD,
Attorneys for Plaintiffs.

And at the same term of said court and on said 11th day of April, A. D. 1867, came the parties appearing herein, by their attorneys, and, by consent, it is ordered that, for the purpose of ascertaining the

quantity of land included within the boundaries mentioned in the petition of plaintiffs, a survey of the same be made, and it being represented that John Runk, Junior, is a competent person to make said survey, he is hereby empowered to make the same and report by Saturday morning next.

And at the same term of said court, to wit, on the 13th day of April, A. D. 1867, it appearing to the court that due notice of the pendency and object of this suit has been given and no sufficient reason appearing why partition of the land described in the petition should not be made, *and* the said parties now come into court and, waiving a jury, submit to the court the trial of the same on the pleadings and evidence, and the court, having heard the proofs and allegations of the respective parties, doth find that the plaintiffs, Thomas Ewing, Jr., Sarah Calhoun, Seth J. Calhoun, Martha Calhoun, Susan Parker, Elizabeth Calhoun, Mary Calhoun, and James Calhoun, and the defendants, Mary J. Wise, sole heir of William Weer, deceased; Thomas H. Swope, Silas Armstrong, Winfield S. Armstrong, Tabitha N. Vedder, Catherine D. Shaffenberg, Caroline M. Vanfossem, Maynard C. Armstrong, C. Armstrong, McIntyre Armstrong, Elizabeth Armstrong, Antoinette Armstrong, Naomie Armstrong, Zelinda Armstrong, David E. James, George B. Wood, Lawrence P. Graham, and The Union Pacific Railway Company, Eastern divisions, are the owners and tenants in common of the real estate described in the petition of plaintiffs, to wit, all that parcel of land lying in the forks of the Missouri and Kansas rivers and between the Missouri State line and the Kansas river as lies north of Turkey creek, containing two hundred and fifty (250) acres, more or less, in the following parts and proportions—that is to say:

The plaintiff Thomas Ewing, Jr., is the owner of nineteen and forty-two one-hundredths (19.42) acres thereof.

The plaintiff- Sarah Calhoun, Seth J. Calhoun, Martha Calhoun, Susan Parker, Elizabeth Calhoun, Mary Calhoun, and James Calhoun, jointly, are the owners of the one-eighth ($\frac{1}{8}$) thereof, less and excepting therefrom eight and sixty-three one-hundredths (8.63) acres, heretofore sold and decreed to be the property of Lawrence P. Graham and also less and excepting one-eighth ($\frac{1}{8}$) of the tract hereinafter decreed by metes and bounds to the Union Pacific Railway Company, Eastern division.

That the defendant Lawrence P. Graham is the owner of eight and sixty-three one-hundredths (8.63) acres thereof.

That the defendants Silas Armstrong, Winfield S. Armstrong, Tabitha N. Vedder, Catherine D. Shaffenberg, Caroline N. Van Fossen, Maynard C. Armstrong, McIntyre Armstrong, Elizabeth Armstrong, Antoinette Armstrong, and Naomie Armstrong and Zelinda Armstrong are jointly the owners of three-eighths ($\frac{3}{8}$) thereof, less forty-three and five-sixths ($43\frac{5}{6}$) acres.

That the defendant David E. James is the owner of thirteen forty-eighths ($\frac{13}{48}$) thereof, less thirteen forty-eighths ($\frac{13}{48}$) of the tract hereinafter decreed by metes and bounds to the Union Pacific Railway Company, Eastern division.

That the defendant George B. Wood is the owner of five forty-eighths ($\frac{5}{48}$) thereof, less five forty-eighths ($\frac{5}{48}$) of the tract
44 hereinafter decreed by metes and bounds to the Union Pacific Railway Company, Eastern divisions.

That the defendant Mary J. Wise is the sole heir of William Weer, deceased, and is the owner of one-eighth ($\frac{1}{8}$) thereof less one-eighth ($\frac{1}{8}$) of the tract hereinafter decreed by metes and bounds to the Union Pacific Railway Company, Eastern division.

That the defendant Thomas H. Swope is the owner of ten (10) acres thereof; that the defendant The Union Pacific Railway Company, Eastern divisions, is the owner of twelve and seven-hundredths ($12\frac{7}{100}$) acres thereof in addition to the tract hereinafter decreed to it by metes and bounds.

And the court doth further find that the said William Weer, in the plaintiffs' petition mentioned, in his lifetime, on the 9th day of April, 1866, by his deed of conveyance, with covenants of warranty for and on behalf of himself and the other parties in interest in this suit, did convey to the defendant The Union Pacific Railway Company, Eastern divisions, the following-described tract of land, to wit:

Two hundred (200) feet on the south side and one hundred and fifty (150) feet on the north side of the center of the track of the said company's railway, extending from the State line of Missouri and Kansas to the Kansas river, containing eight and four hundred and thirty-one thousandths (8.431) acres, more or less, and that all of said parties in interest at that time having title to said lands released by their several deeds to the said company their respective interests in said tract or parcel of land conveyed by said Weer as aforesaid, and that all the parties in interest have received from the defendant The Union Pacific Railway Company, Eastern divisions, for the parcel of land so conveyed to the said railway company by the said William Weer four thousand dollars ($4,000.00) in full satisfaction and payment therefor, and that said conveyance of said Weer was executed by the consent of all of said parties in interest, as in the answer of said company it is alleged.

It is therefore ordered, adjudged, and decreed that the title to the tract or parcel of land so as aforesaid found to have been conveyed to said railway company by said Weer and others, to wit, two hundred (200) feet on the south side and one hundred and fifty (150) feet on the north side of the center of the said company's railway track between the Kansas river and the State line of Missouri and Kansas, be, and the same is hereby, declared to be vested in the said railway company by fee-simple title, free and clear of all claims and demands of any of the parties hereto, and it is further ordered, adjudged, and decreed that the tract of land in said plaintiffs' petition mentioned, to wit:

"All that parcel of land lying in the forks of the Missouri and Kansas rivers and between the Missouri State line and the Kansas river as lies north of Turkey creek, containing about two hundred and fifty (250) acres, more or less," save and except the portion hereinbefore decreed by metes and bounds to the Union Pacific Railway

Company, Eastern division, be partitioned and divided among the said respective owners thereof in the manner following—that is to say:

To Thomas Ewing, Jr., nineteen and forty-two one-hundredths (19.42) acres of average value.

To Sarah Calhoun, Seth J. Calhoun, Martha Calhoun, Susan Parker, Elizabeth Calhoun, and Mary Calhoun and James Calhoun, jointly, one-eighth ($\frac{1}{8}$) thereof less eight and sixty-three hundredths (8.63) acres.

To Lawrence P. Graham, eight and sixty-three hundredths (8.63) acres thereof.

To Silas Armstrong, Winfield S. Armstrong, Tabitha N. Vedder, Catherine D. Shaffenberg, Caroline N. Vanfossen, Maynard C. Armstrong, McIntyre Armstrong, Elizabeth Armstrong, Antoi-
45 nette Armstrong, Naomi Armstrong, and Zelinda Armstrong, jointly, three-eighths ($\frac{3}{8}$) less forty-two and one-half ($42\frac{1}{2}$) acres.

To David E. James, thirteen forty-eighths ($\frac{13}{48}$) thereof.

To George B. Wood, five forty-eighths ($\frac{5}{48}$) thereof.

To Mary J. Wise, one-eighth ($\frac{1}{8}$) thereof.

To Thomas H. Swope, ten (10) acres thereof of average value.

To the Union Pacific Railway Company, Eastern divisions, twelve and seven hundredths ($12\frac{7}{100}$) acres thereof of average value.

And that on such partition the part and parcel set apart and partitioned as above directed be held by the respective parties in fee, free from interests of the other joint tenants and all inchoate rights of dower.

And it is further ordered that a writ in due form of law be issued to the sheriff of Wyandotte county commanding him that by the oath of Isaac B. Sharp, James McGrew, and Byron Judd, three judicious and disinterested freeholders of said county, residing in the vicinity of the said land, he cause the said land to be set off and partitioned among the above-named persons and parties in the parts and proportions hereinbefore stated and adjudged to belong to each respectively.

And it is further ordered and adjudged that the costs of this suit and the costs and expenses of such partition be paid by the several parties in interest in said land in proportion to the interest of each in said land, and that the same be a lien upon the interest of the said parties in said land for the proportion of each thereof.

To which finding and each of them and to the decree herein said defendants, The Union Pacific Railway Company, Eastern divisions, and Thomas H. Swope, by their attorneys, except, and for good cause shown sixty (60) days is given them to make cases herein forever to the supreme court.

And afterwards, to wit, on the 11th day of May, A. D. 1867, said defendants, George B. Wood, filed the following precipe:

District Court of Wyandotte County.

THOMAS EWING, JR., *et al.*, Plaintiffs,
vs.
WILLIAM WEER *et al.*, Defendants. } No. 911.

To the clerk of said district court:

Issue writ of partition in the above-entitled cause, returnable according to law.

GEORGE B. WOOD, *Defendant.*

Dated M'y 11th, 1869.

Whereupon was issued the following writ of partition:

STATE OF KANSAS,
First Judicial District, Wyandotte County.

The State of Kansas to the sheriff of the county of Wyandotte, Greeting:

We command you that without delay, by the oaths of Isaac B. Sharp, James McGrew, and Byron Judd, you cause partition to be made of "all that parcel of land lying in the forks of the Missouri and Kansas rivers and between the Missouri State line and the Kansas river as lies north of Turkey creek, containing two hundred and fifty (250) acres, more or less," save and except the portions declared to be vested in the Union Pacific Railway Company, Eastern division, and described as follows, to wit:

Two hundred (200) feet on the south side and one hundred and fifty (150) feet on the north side of the center of said railway
46 company's railway track between the Kansas river and the State line of Missouri and Kansas, said partition to be made among the respective owners of said land in manner following, to wit—that is to say:

To Thomas Ewing, Jr., nineteen and forty-two hundredths (19.42) acres of average value; to Sarah Calhoun, Seth J. Calhoun, Martha Calhoun, Sarah Parker, Elizabeth Calhoun, Mary Calhoun, and James Calhoun, jointly, one-eighth ($\frac{1}{8}$) thereof, less eight and sixty-three one-hundredths (8.63) acres.

To Lawrence P. Graham, eight and sixty-three hundredths (8.63) acres; to Silas Armstrong, Winfield S. Armstrong, Tabitha N. Vedder, Catherine D. Shaffenberg, Caroline M. Van Fossen, Maynard C. Armstrong, McIntyre Armstrong, Elizabeth L. Armstrong, Antoinette Armstrong, Naomie Armstrong, jointly, three-eighths ($\frac{3}{8}$), less forty-two and one-half ($42\frac{1}{2}$) acres.

To David E. James, thirteen forty-eighths ($\frac{13}{48}$) thereof.

To George B. Wood, five forty-eighths ($\frac{5}{48}$) thereof; to Mary J. Wise, one-eighth ($\frac{1}{8}$) thereof; to Thomas H. Swope, ten (10) acres thereof of average value.

To the Union Pacific Railway Company, Eastern divisions, twelve (12) acres and seven hundredths ($_{100}^{7}$) of an acre thereof of average value.

And of your proceedings hereunder make due return at the next term of the district court of said county of Wyandotte, and have you there and then this writ.

Witness my hand and the seal of said court affixed at my office, in the city of Wyandotte, this the 11th day of May, A. D. 1867.

[SEAL.] JAMES A. CRUISE, *Clerk.*

And afterwards, on the 26th day of September, A. D. 1867, said writ of partition was returned, executed as follows:

"Received this writ May 11th, 1867, at four (4) o'clock p. m., and executed this 26th day of September, A. D. 1867, by the oaths of the within-named commissioners, whose oath and report are herewith returned."

P. I. FERGUSON,
Sheriff of Wyandotte County, Kansas,
By SILAS ARMSTRONG,
Under Sheriff.

Writ of Partition.

In the District Court of Wyandotte County, State of Kansas.

THOMAS EWING, JR., *et al.*, Plaintiffs,
vs.
WILLIAM WEER *et al.*, Defendants.

Report of commissioners.

STATE OF KANSAS,
Wyandotte County, } *ss:*

Isaac C. Sharp, James McGrew, and Byron Judd, being first duly sworn, do say that they are freeholders in said county and State, and that they will view and examine the real estate to be by them partitioned in the above-entitled cause and will set apart the same in such lot or lots as will be most advantageous and equitable, having due regard to the improvements situated and quality in the different parts of such estate.

ISAAC B. SHARP.
JAMES McGREW.
BYRON JUDD.

Sworn to before me, James A. Cruise, clerk of the first district court of said county and State, this 26th day of September, A. D. 1867.

JAMES A. CRUISE, *Clerk.*

47 We, the undersigned commissioners appointed by the Hon. David J. Brewer, judge of the first district of Wyandotte county, State of Kansas, at the April term thereof, A. D. 1867, to view, examine, and set apart to the respective owners of said land in such lot or lots as will be most advantageous and equitable,

having due regard to the improvements, situation, and quality of the different parts of the following-described real estate, situated in Wyandotte county, State of Kansas, to wit:

All that parcel of land lying in the forks of the Kansas and Missouri rivers and between the Missouri State line and the Kansas river as lies north of Turkey creek, containing two hundred and fifty (250) acres, more or less, save and except the portions declared to be vested in the Union Pacific Railway Company, Eastern divisions, and described as follows:

Two hundred (200) feet on the south side and one hundred and fifty (150) feet on the north side of the center of said railway company's railway track between the Kansas river and the State line of Missouri and Kansas, beg leave to report that—

According to the commands of the writ of partition issued in the above-entitled cause and on call of the sheriff of said county, and after being first duly sworn as by law required, and upon actual view and examination of said real estate, do make partition of the same as follows, to wit:

We assign to Thomas Ewing, Jr., for his share therein so much thereof as is contained in the following bounds, to wit:

Commencing south sixty-one and one-half (61½) degrees west one hundred and fifty-eight and one-half (158½) feet and south nine hundred and eighty-seven and one-half (987½) feet along the west boundary line of the State of Missouri from the northeast corner of fractional section number fourteen (14), township eleven (11), range twenty-five (25), thence south six hundred (600) feet, and thence south sixty-one and one-half (61½) degrees west three hundred and eight (308) feet; thence north six hundred (600) feet; thence north sixty-one and one-half (61½) degrees east three hundred and eight (308) feet to the beginning, containing three and seventy-three hundredths (3.73) acres, and numbered on the plat of said described real estate, which is hereto attached and made a part of this report, as number three (3); and also commencing north twenty-eight and one-half (28½) degrees west eighteen hundred and five and three-fourths (1,805¾) feet from the southeast corner of fractional section eleven (11), township eleven (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west twelve hundred and eighty-three and one-half (1,283½) feet to the east bank of the Kansas river; thence down the same north thirty-four and three-fourths (34¾) — west three hundred and thirty (330) feet; thence north sixty-one and one-half (61½) degrees east nineteen hundred and eight (1,908) feet to the west bank of the Missouri river; thence down the same south fifty-six and three-fourths (56¾) degrees east three hundred and seventy-two and one-half (372½) feet; thence south sixty-one and one-half (61½) degrees west seven hundred and sixty-four and three-fourths (764¾) feet to the beginning, and containing fourteen and nine-tenths (14.9) acres, and marked on said plat number thirteen (13), and containing in the aggregate eighteen and sixty-three hundredths (18.63) acres.

We assign to Sarah Calhoun, Seth J. Calhoun, Martha Calhoun, Susan Parker, Elizabeth Calhoun, Mary Calhoun, and James Cal-

houn jointly for their share therein so much thereof as is contained in the following bounds, to wit:

Commencing on the west boundary line of the State of
48 Missouri south fifteen hundred eighty-seven and one-half (1,587½) feet from the northeast corner of fractional section fourteen (14), township eleven (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west four hundred and sixty-six and one-half (466½) feet; thence north six hundred (600) feet; thence south sixty-one and one-half (61½) degrees west two hundred and seventy-eight and one-half (278½) feet; thence south six hundred (600) feet; thence south sixty-one and one-half (61½) degrees west fifty-seven and one-half (57½) feet to the east bank of the Kansas river; thence up the same to the middle of the old bed of Turkey creek; thence down the same to the State line; thence north along the same five hundred and thirty-five and one-half (535½) feet to the beginning, and containing thirteen and one-half (13½) acres, and marked on said plat number one (1); and also commencing south sixty-one and one-half (61½) degrees west seventy-four and one-fourth (74¼) feet and north twenty-eight and one-half (28½) degrees west thirty-eight hundred and sixty (3,860) feet from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west seven hundred and eighty-three and three-fourths (783¾) feet to the bank of the Kansas river; thence down the same north thirty-five (35) degrees east eight hundred and twenty-seven (827) feet to the center of a county road leading from Kansas City to Wyandotte; thence along the same south thirty-five and one-fourth (35¼) degrees east three hundred and seventy-one and one-half (371½) feet to the beginning, and containing three and thirty-four hundredths (3.34) acres, and marked on said plat number seventeen (17), and containing in the aggregate sixteen and eighty-four hundredths (16.84) acres.

We assign to Lawrence P. Graham for his share therein so much thereof as is contained in the following bounds, to wit:

Commencing south sixty-one and one-half (61½) degrees west seven hundred and forty-five (745) feet and south nine hundred and thirty-seven and one-half (937½) feet along the State line from the northeast corner of section number fourteen (14), township eleven (11), range twenty-five (25), thence south six hundred (600) feet; thence south sixty-one and one-half (61½) degrees west fifty-seven and one-half (57½) feet to the east bank of the Kansas river; thence down the same north fourteen and three-fourths (14¾) degrees west five hundred and forty-shree (543) feet; thence north sixty-one and one-half (61½) degrees east two hundred and fifteen (215) feet to the beginning, and containing one and sixty-five hundredths (1.65) acres, marked on said plat as number two (2); also commencing north six hundred and fifty-seven (657) feet along the State line from the southeast corner of fractional section eleven (11), township (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west sixteen hundred and twenty-nine and one-half (1,629½) feet to the east line or bank of the Kansas river; thence

down the same north twenty-seven (27) degrees west one hundred and seventy-three (173) feet; thence north sixty-one and one-half (61½) degrees east one hundred and seventy-two and three-fourths (172¾) feet to the State line; thence running along the same south one hundred and ninety-six and three-fourths (196¾) feet to the beginning, containing six and sixty-three hundredths (6.63) acres, and marked on said plat as number ten (10), and containing in the aggregate eight and twenty-eight hundredths (8.28) acres.

We assign to Silas Armstrong, Winfield S. Armstrong, Tabitha N. Vedder, Catherine D. Shaffenberg, Caroline M. Van Fossen, Maynard C. Armstrong, McIntyre Armstrong, Elizabeth Armstrong, Antoinette Armstrong, and Naomie Armstrong jointly for their shares therein so much thereof as is contained in the following bounds, to wit:

49 Commencing south sixty-one and one-half (61½) degrees west eight hundred and twenty-five and one-fourth (825¼) feet and south two hundred and ninety-nine (299) feet along the State line from the northeast corner of fractional section number fourteen (14), township eleven (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west three hundred and seventy (370) feet to the east bank of the Kansas river; thence down the same north twenty-seven (27) degrees west eight hundred and forty and one-half (840½) feet; thence north sixty-one and one-half (61½) degrees east three hundred and forty-eight (348) feet; thence south twenty-eight and one-half (28½) degrees east eight hundred and forty and one-half (840½) feet to the beginning, and containing six and ninety-one hundredths (6.91) acres, and marked on said plat as number six (6); and also commencing north eight hundred and fifty-three and three-fourths (853¾) feet along the State line from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west seventeen hundred and twenty and three-fourths (1,720¾) feet to the east bank of the Kansas river; thence down the same north twenty-seven (27) degrees west six hundred and thirty-nine and one-half (639½) feet; thence north sixty-one and one-half (61½) degrees east two thousand and fifty-one and one-half (2,051½) feet to the State line; thence along the same south seven hundred and twenty-nine and one-half (729½) feet to the beginning, and containing twenty-seven and sixty-seven hundredths (27.67) acres, and marked on said map number eleven (11), and containing in the aggregate thirty-four and fifty-eight hundredths (34.58) acres.

We assign to David E. James for his share therein so much thereof as is contained in the following bounds, to wit:

Commencing south two hundred and ninety-nine (299) feet along the State line from the northeast corner of section number fourteen (14), township eleven (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west five hundred and sixty-four and three-fourths (564¾) feet; thence north twenty-eight and one-half (28½) degrees west eight hundred and forty (840) feet; thence north sixty-one and one-half (61½) degrees east five hundred and sixty-four and three-fourths (564¾) feet; thence south twenty-

eight and one-half (28½) degrees east eight hundred and forty (840) feet to the beginning, and containing ten and eighty-hundredths (10.80) acres, and marked on said plat as number eight (8); also commencing north twenty-eight and one-half (28½) degrees west twenty-five hundred and seventeen and three-fourths (2,517¾) feet from the southeast corner of section number eleven (11), township eleven, (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west fourteen hundred and seventeen (1,417) feet to the east bank of the Kansas river; thence down the same north forty-two and three-fourths (42¾) degrees west two hundred and eighty-two (282) feet; thence north twenty-six and three-fourths (26¾) degrees west six hundred (600) feet, north nine and three-fourths (9¾) degrees west one hundred and nine (109) feet, north thirteen and one-half (13½) degrees east eighty-six (86) feet, and north thirty-one and one-half (31½) degrees east ninety-one (91) feet; thence north sixty-one and one-half (61½) degrees east fifteen hundred and twenty-seven (1,527) feet to the west bank of the Missouri river; thence down the same south twenty-seven and three-fourths (27¾) degrees east three hundred and ninety-three and one-half (393½) feet, south forty-three and one-half (43½) degrees east four hundred and thirty-five (435) feet, and south forty-six and one-fourth (46¼) degrees west two hundred and eighty-seven (287) feet; thence south sixty-one and
50 one-half (61½) degrees west four hundred and twenty-five and one-half (425½) feet to the beginning, and containing forty-three and fifty-three hundredths (43.53) acres, and marked on said plat as number fifteen (15), and containing in the aggregate fifty-four and forty-two hundredths (54.42) acres.

We assign to George B. Wood for his share therein so much thereof as is contained in the following bounds, to wit:

Commencing north twenty-eight and one-half (28½) degrees west twenty-one hundred and thirty-three and three-fourths (2,133¾) feet from the southeast corner of fractional section number eleven (11), township eleven (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west thirteen hundred and nineteen and one-half (1,319½) feet to the east bank of the Kansas river; thence down the same north forty-two and three-fourths (42¾) degrees west three hundred and ninety-five and one-fourth (395¼) feet; thence north sixty-one and one-half (61½) degrees east eighteen hundred and forty-two and one-half (1,842½) feet to the west bank of the Missouri river; thence down the same north fifty-one and one-half (51½) degrees west four hundred and seventeen and one-fourth (417¼) feet; thence south sixty-one and one-half (61½) degrees west five hundred and eighty-eight and one-half (588½) feet to the beginning, and containing sixteen and fifty-four hundredths (16.54) acres, and marked on said plat as number fourteen (14); also commencing south two hundred and ninety-nine (299) feet along the State line from the northeast corner of section fourteen (14), township eleven (11), range twenty-five (25), thence north twenty-eight and one-half (28½) degrees west three hundred and forty (340) feet; thence north sixty-one and one-half (61½) degrees east four hundred and fifty-six and one-fourth (456¼) feet to the State line; thence along the same

south nine hundred and fifty-six (956) feet to the beginning, and containing four and four-tenths (4.4) acres, and marked on said plat as number nine (9), and containing in the aggregate twenty and ninety-four hundredths (20.94) acres.

We assign to Mary J. Wise for her share thereof so much thereof as is described and contained in the following bounds, to wit:

Commencing south sixty-one and one-half (61½) degrees west five hundred and sixty-four and three-fourths (564¾) feet and south two hundred and ninety-nine (299) feet along the State line from the northeast corner of section number fourteen (14), township eleven (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west two hundred and sixty and one-half (260½) feet; thence south twenty-eight and one-half (28½) degrees west eight hundred and forty (840) feet; thence north sixty-one and one-half (61½) degrees east two hundred and sixty and one-half (260½) feet; thence south twenty-eight and one-half (28½) degrees east eight hundred and forty (840) feet to the beginning, and containing five and two-hundredths ($5\frac{2}{100}$) acres, and marked on said plat as number seven (7); also commencing on the State line north fifteen hundred and eighty-three and one-fourth (1,583¼) feet from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west twenty hundred and fifty-one and one-half (2,051½) feet to the east bank of the Kansas river; thence down the same north twenty-seven (27) degrees west four hundred and sixteen (416) feet; thence north sixty-one and one-half degrees (61½) east twenty hundred and forty-eight and one-fourth (2,048¼) feet to the west bank of the Missouri river; thence down the same south fifty-seven and three-fourths (57¾) degrees east two hundred and twenty-six and one-half (226½) feet to the State line; thence along the same south two hundred and forty-eight and one-fourth (248¼) feet to the beginning, and
51 containing twenty and eleven-hundredths (20.11) acres, and marked on said plat as number twelve (12), and containing in the aggregate twenty-five and thirteen-hundredths (25.13) acres.

We assign to Thomas H. Swope for his share therein so much thereof as is contained in the following bounds, to wit:

Commencing on the State line south nine hundred and eighty-seven and one-half (987½) feet from the northeast corner of section fourteen (14), township eleven (11), range twenty-five (25), thence along the same south six hundred (600) feet; thence south sixty-one and one-half (61½) degrees west one hundred and fifty-eight and one-half (158½) feet; thence north six hundred (600) feet; thence north sixty-one and one-half (61½) degrees east one hundred and fifty-eight and one-half (158½) feet to the beginning, and containing one and ninety-two hundredths (1.92) acres, and marked on said plat as number (4); also commencing north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west twelve hundred and ninety-six (1,296) feet to the east bank of the Kansas river; thence down the same north

thirty-one and one-fourth (31¼) degrees east five hundred and seven and one-fourth (507¼) feet; thence north sixty-one and one-half (61½) degrees east ten hundred and ninety-two and one-half (1,092½) feet to the west bank of the Missouri river; thence down the same south twenty-seven and three-fourths (27¾) degrees east two hundred and fifty-five and one-half (255½) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the beginning, and containing seven and sixty-eight hundredths (7.68) acres, and marked on said plat as number sixteen (16), and containing in the aggregate nine and six-tenths (9.6) acres.

We assign to the Union Pacific Railway Company, Eastern division, for its share therein, so much thereof as is contained in the following bounds, to wit:

Commencing at the State line south two hundred and ninety-nine (299) feet from the northeast corner of section fourteen (14), township eleven (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west eleven hundred ninety-five and one-fourth (1,195¼) feet to the east bank of the Kansas river; thence up the same south twenty-two and one-half (22½) degrees east two hundred and fifty-six and one-half (256½) feet; thence north sixty-one and one-half (61½) degrees east ten hundred and eighty-three and one-half (1,083½) feet to the State line; thence along the same north two hundred and ninety and one-fourth (290¼) feet to the place of beginning, containing six and sixty-seven hundredths (6.67) acres and marked on said plat as number five (5), and also commencing north twenty-eight and one-half (28½) degrees west three thousand eight hundred and sixty (3,860) feet from the southeast corner of section number eleven (11), township eleven (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west seventy-four and one-fourth (74¼) feet to the center of the county road leading from Kansas City to Wyandotte; thence along the same north thirty-five and one-fourth (35¼) degrees west three hundred and ninety (390) feet to the east bank of the Kansas river; thence down the same with the meanders thereof to the Missouri river; thence down the west bank of the Missouri river with the meanders thereof to a point north sixty-one and one-half (61½) degrees east two hundred and thirty-four and one-half (234½) feet from the beginning; thence straight to the beginning and containing four and ninety-one hundredths (4.91) acres and marked on said plat as number eighteen (18) and containing in the aggregate eleven and fifty-eight hundredths (11.58) acres.

52 By a survey which was made of the lands during the April term of the first district court, A. D. 1867, they were found to contain two hundred and eight and four-tenths (208.4) acres, upon which a division was made and based, giving to Thomas Ewing, Jr., nineteen and forty-two hundredths (19.42) acres, and to L. P. Graham eight and sixty-three hundredths (8.63) acres; to the heirs of John Calhoun, seventeen and fifty-five hundredths (17.55) acres; heirs of Silas Armstrong, thirty-six and three hundredths ($36\frac{3}{100}$) acres; David E. James, fifty-six and seventy-one hundredths (56.71) acres; George B. Wood, twenty-one and eighty-one hundredths

(21.81) acres; heirs of John Calhoun, seventeen and fifty-five hundredths (17.55) acres; heirs of William Weer, twenty-six and eighteen hundredths (26.18) acres; Thomas H. Swope, ten (10) acres, and to the Union Pacific Railway Company, Eastern division, twelve and seven-tenths (12.7) acres.

A careful survey made during the month of July last shows that, owing to waste by the washing away of the banks of the Kansas and Missouri rivers, the quantity of land has decreased to two hundred (200) acres.

The allotments are proportional to this quantity, and gives an area to Thomas Ewing, Jr., of eighteen and sixty-three hundredths (18.63) acres; Calhoun heirs, sixteen and eighty-four hundredths (16.84) acres: Graham, eight and twenty-eight hundredths (8.28) acres; Armstrong heirs, thirty-four and fifty-eight hundredths (34.58) acres; James, fifty-four and forty-two hundredths (54.42) acres; Wood, twenty and ninety-four hundredths (20.94) acres; Wm. Weer's heir-, twenty-five and thirteen hundredths (25.13) acres; Swope, nine and six-tenths (9.6) acres, and to the Union Pacific Railway Company, East division, eleven and fifty-eight hundredths (11.58) acres.

The accompanying plat hereto attached represents the allotments, with the corners and distances marked in the lines and the several areas in acres and hundredths of an acre, all of which is respectfully submitted.

Given under our hands this 26th day of September, A. D. 1867.

ISAAC B. SHARP,
JAMES McGREW,
BYRON JUDD,
Commissioners.

James McGrew, 10 days' attendance as commissioner.
I. B. Sharp, 10 days' attendance as commissioner.
Byron Judd, 10 days' attendance as commissioner.
I. B. Sharp, making report, 2 days.

And at the following October term of said court, to wit, on the 9th day of October, A. D. 1867, said defendant, The Union Pacific Railway Company, Eastern Division, filed their exceptions to the report of said commissioner- as follows:

THOMAS EWING, JR., *et al.*, Plaintiffs,
vs.
THE UNION PACIFIC RAILWAY COMPANY, EASTERN DIVISION, *et al.*, Defendants.

The Union Pacific Railway Company, East Division, the defendant, comes and excepts to the report of the sheriff and freeholders making partition of the lands in controversy in -his cause, and object- to the same and the confirmation thereof for the following reasons:

First. The said partition is not the most advantageous to the pro-

prietors of said lands, having regard to the improvements, situation, and quality of the estate partitioned.

Second. The partition is inequitable and unjust to the said
53 railway company in this, that the railway tracks of said company are upon the south side of the track or stop upon which its main line is extended; that the lands allot-ed the company upon the north side of the track are not suitable to the use of the company, that side of the track being occupied by connecting railroads—the Missouri Pacific Railway Company guage—said track or stop being of no value to this company, the defendant in this case.

Third. It was practicable to have allotted all the portion of the defendant The Union Pacific Railway Company, East Division, upon the south side of the railway, so as to have accommodated the said defendant and without injury to the other parties in interest.

That said land upon the said south side of the track and beyond the two hundred (200) feet from the center thereof are not of equal value to those on the north side; except the lot assigned to this defendant, which is of no value, the said defendant asks that the report of sheriff and of said freeholders be set aside and for such other rule or orders as to the court shall appear to be just.

J. K. HALE,
For Defendant Union Pacific Railway, Eastern Division.

And at the same term of said court, to wit, on the fifteenth (15th) day of October, A. D. 1857, on motion of plaintiffs and upon producing the return of the sheriff and commissioners' report, heretofore appointed, and a motion of the said defendant, The Union Pacific Railway Company, Eastern Division, to set aside the report, *and* being argued, was by the court overruled, and the said return and report having been examined by the court here and found in all respects correct and in conformity to law—

It is hereby ordered that the said proceedings and report be, and the same are hereby, approved and confirmed, and that the said parties hold in severalty the parts and premises so set off and assigned to each respectively as the same appears by said report and proceedings; to all of which rulings the said defendant, The Union Pacific Railway Company, Eastern Division, by counsel, excepts.

And it is further ordered that Isaac B. Sharp, as commissioner, be allowed the sum of sixty dollars ($60.00).

That Byron Judd and James McGrew, as such commissioners, be allowed the sum of fifty dollars ($50.00) each.

That William Miller, as engineer, be allowed the sum of one hundred and twenty-five dollars ($125.00); that the sheriff aforesaid be allowed the sum of twenty dollars ($20.00), and that the attorneys appearing in said case be allowed the sum of eight hundred dollars ($800); that the said sum of eight hundred dollars ($800) be apportioned among the said attorneys in the proportion that the amounts of land they represented bears to all the lands represented, and that all the above allowances and other costs herein be apportioned among the several parties hereto in the proportion that their interest respectively bear to the entire property, and in default of

payment of the proper amounts by the respective parties that executions issue therefor against the parties, respectively, for the parties entitled thereto; to all of which judgment and orders said defendant, The Union Pacific Railway Company, Eastern Division, by counsel, except- and presents to the court its bill of exceptions, which are signed by the judge and ordered to be made a part of the record of this cause and read as follows:

54 THOMAS EWING, JR., *et al.*, Plaintiffs,
vs.
UNION PACIFIC RAILWAY COMPANY, EASTERN DIVISION, Defendant.

Be it remembered that upon the coming on of the report of the sheriff making partition in this cause defendant, The Union Pacific Railway Company, Eastern Division, filed their exceptions to said report, as follows:

The defendant, The Union Pacific Railway Company, Eastern Division, comes and excepts to the report of the sheriff and the freeholders making partition of the lands in controversy in this case and object- to the same and the confirmation thereof for the following reasons:

First. The said partition is not the most advantageous to the proprietors of said land, having regard to the situation of improvements and quality of the estate partitioned.

Second. The partition is inequitable to the said railway company in this, that the said tracks of said railway company are upon the south side of their track or stop upon which its main line is extended; that the lands allotted to the company upon the north side of the track are not suitable to the use of the company, that side of the track being occupied by the connecting railroad, the Missouri Pacific Railway Company, which is upon a different guage, said track or strip being of no value to this company, the defendant in this case.

Third. It was practicable to have allotted all the portions of the defendant's The Union Pacific Railway Company, Eastern Division, upon the south side of the railway so as to have accommodated the said defendant and without injury to the other parties; that said lands upon the said south side of the track and beyond the two hundred (200) feet from the center thereof are not of equal value to those on the north side except the lot assigned to this defendant, which is of no value.

The said defendant asks that the said reports of the sheriff and of said freeholders be set aside and for such other rules or orders as to the court shall appear to be just.

J. K. HALE,
— *Union Pacific Railway Company, Eastern Div.*

And in support of the said motion said defendant called one of the commissioners, Isaac B. Sharp, Esq., who, being sworn, testified that the commissioners had much difficulty in making the partition growing out of the fact that the commissioners felt *that* constrained

by the order under which they were acting to give each party a certain number of acres of the whole, as declared in the order. This obliged the commissioners to increase the number of lots and allot them to the parties in different locations; that, giving each party the requisite number of acres, they made a fair and equitable division of the lots, as the commissioners believed making the respective acres of each party of equal value; that before the partition was made the superintendent of the said defendant railway company and the solicitor of the company appeared before the commissioners and requested, as the majority of them understood, that the share of the company be assigned to it along and contiguous to the track decreed to the company, so as — extend or be straight with the line of the Kansas river—

The north line of the Missouri Pacific Railway Company's land as shown on the map and has been allot-ed.

55 These lands were desired for the purpose of exchanging with the Missouri Pacific Railway Company for the lands of that company on the south side of its track in Missouri, so that the defendant could have the use of those lands for the extension of its track upon them in order to the convenient transaction of the operations of the company; and such parties also desired the residue of the land to be allotted to the company to be set off on the south side of the stop decreed a*b*d shown on the map in red color. This was desired because the tracks of the company were all on the south side of the main track. The commissioners associated with the witness understood that the defendant preferred more land upon the north than on the south side and accordingly assigned the lot there. To this witness with some hesitation consented.

Witness Sharp further stated that after the defendant, the railway company, appeared before the commissioners through their superintendent and attorney and made known its desires in the premises the commissioners made their decision as they thought fairly and equitable, considering all the interests involved.

The said defendant also called A. Anderson, who testified that he was the superintendent of the railway of the said defendant, and that all the said tracks of the company start off from the Union line on the south to the right going east, and those of the Missouri Railroad Company to the north and right leading west; that all the improvements of the reported railway company's have been made with the reference to the transaction of business in that way—

That is, each party occupying its right as they approach the State line; that these arrangements cannot be altered without an expense of thousands of dollars, and that any change will be extremely inconvenient and very costly; that he did appear before the commissioners and represent the wishes of the company and explained the manner in which the business was done, and that the Missouri and Kansas road were not of the same *guage*, and explained to the commissioners what witness considered to be the necessity of the company to have the land on the south side, and that the company also wanted the land on the north for exchange with the and the use of the Missouri Company; that if the commissioners considered that

the company preferred the land on the north to that on the south they misunderstood him, as the lands south were needed for the defendant's tracks, while that on the north was desired for the exchange with and for the convenience of the Missouri Company.

That witness does not think there is any difference in the value of the lands except as they are exposed to wash along the Missouri river banks unless they may be enhanced in value by their proximity to the railroad. The land allotted to the company on the point at the junction of the routes is of no value to the company of itself—not worth protecting from the banks of the rivers; and the foregoing was all the evidence offered or given in support or upon the said motion, and the court took the same under advisement, and after considering the same overruled said exceptions and refused to set aside said report as prayed by said defendant and ordered that the report of the commissioners be confirmed, to which *which* ruling and decision of the court in overruling said exceptions and approving the report of said commissioners the said defendant then and there excepted, and because the foregoing does not appear on record the said defendant presents this its bill of exceptions and prays that the same be signed, sealed by the judge, and made a part of the record, which is done.

[SEAL.] DAVID J. BREWER, *Judge.*

57 STATE OF KANSAS, } *ss:*
County of Wyandotte, }

I, L. C. Trickey, clerk of the district court in and for said county and State, hereby certify the annexed plat to be a true and complete copy of original plat of partition attached to report of commissioners in case of Thomas Ewing, Jr., *et al. vs.* Wm. Weer *et al*, No. 911 of this court, as fully as the same appears on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Wyandotte, this 29th day of May, 1885.

L. C. TRICKEY,
Clerk District Court,
[SEAL.] By M. Y. TRICKEY,
Deputy Clerk.

58 STATE OF KANSAS, } *ss:*
County of Wyandotte, }

I, L. C. Trickey, clerk of the district court in and for said county, do hereby certify that the above and foregoing is a correct and complete copy of the record of Thomas Ewing, Jr., *et al. vs.* William Weer *et al.*, No. 911 of the case therein entitled, as the same appears of record in Final Record " E," in my office.

In testimony hereof I have hereunto set my hand and affixed the

seal of said court, at the city of Wyandotte, this the 22nd day of April, A. D. 1885.

[SEAL.] L. C. TRICKEY, *Clerk.*

STATE OF KANSAS, } ss:
County of Wyandotte, }

—, W. R. Wagstaff, judge of the 10th judicial district of the said State and present judge of the district court of said county, do hereby certify that L. C. Trickey, by whom the above attestation was made, was at the date thereof clerk of said court, duly qualified, and that the same is in due form of law and made by the proper officer.

Date, April 22nd, A. D. 1885.

W. R. WAGSTAFF,
District Judge.

STATE OF KANSAS, } ss:
County of Wyandotte, }

—, L. C. Trickey, clerk of the district court in and for said county, do hereby certify that Hon. W. R. Wagstaff, whose genuine signature is subscribed to the foregoing certificate, was at the date thereof presiding judge of said court, duly commissioned, sworn, and acting.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at the city of Wyandotte, this the 22nd day of April, A. D. 1885.

[SEAL.] L. C. TRICKEY, *Clerk.*

Cost of transcript, $13.50; received of Tourtelotte and Alcott, by J. Brumback, $13.50.

L. C. TRICKEY, *Clerk.*

The plaintiff- next put in evidence a duly certified copy of original plat and map made a part of the report of the commissioners in the said partition suit of Thomas Ewing and others, plaintiffs, *vs.* Wm. Weer and others, defendants, No. 911; which plat and map is as follows, being the copy actually used in evidence, to wit:

Here in the original case made is the plat referred to, which cannot be copied.

59 For original plat see original case made.

Attestation of Clerk.

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, L. C. Trickey, clerk of district court in and for said county and State, hereby certify the annexed plat to be a true and complete copy of original plat of partition attached to report of commissioners in case of Thomas Ewing, Jr., *et al. vs.* Wm. Weer *et al.*, No. 911 of this court, as fully as the same appears on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Wyandotte, this 29th day of May, 1885.

[SEAL.]

L. C. TRICKEY,
Clerk District Court,
By M. J. TRICKEY,
Deputy Clerk.

Fee, $5.00, received.

D. M. SMITH.

(Here follows diagram marked page 60.)

61 Plaintiff- next offered in evidence deed from David E. James and wife to Joseph E. Snyder, dated April 13th, 1869, for four (4) acres of land.

Objected to by counsel for the defendants on the ground that the same is incompetent, irrelevant, and immaterial; which objection was by the court overruled, and to which ruling of the court the defendants at the time excepted.

Plaintiffs' counsel said:

"I offer this in evidence and read it to show why I put the next item of evidence."

The deed was in words and figures following, to wit:

Warranty Deed.

{ United States. Used for within purpose 13th April, 1869. Internal revenue stamp. Life insurance. 50. }

This indenture made this 13th day of April in the year of our Lord one thousand, eight hundred and sixty-nine, between David E. James and Jennie M. James, his wife of the first part, and Joseph E. Snyder party of the second part witnesseth: That the said party of the first part, in consideration of the sum of one dollar ($1.00) to them duly paid have sold and by these presents do grant and convey to the said party of the second part, his heirs and assigns, all that tract or parcel of land situated in the county of Wyandotte and State of Kansas and described as follows, to wit:

Variation eleven (11) degrees east, beginning at the southwest corner of a tract of land conveyed by said James to one James F. Joy, and now known as railroad land, said southwest corner being the northwest corner of a certain parcel of land now owned by said James.

Thence running south sixty-one (61) degrees and fifty (50) minutes west, five hundred and eighty (580), and eight-tenths ($\frac{8}{10}$) feet; thence south twenty-eight (28) degrees ten (10) minutes three hundred (300) feet thence north sixty-one (61) degrees and fifty (50) minutes east five hundred and eighty and eight-tenths (580.8) feet; thence north twenty-eight (28) degrees and ten (10) minutes west three hundred (300) feet to the place of beginning, and all to contain

four (4) acres, said land being in township eleven (11), range twenty-five (25) in the above-mentioned county and State.

This conveyance is made subject to the payment of a mortgage of fifty dollars ($50.00) per acre given to Silas Armstrong by said James, also subject to the payment of one hundred and twenty-five ($125.00) dollars due to C. F. Welland on or before May 12th, 1859, with interest at ten (10) per cent. per annum; also taxes due now upon above-described land amounting to seventeen dollars and fifty cents ($17.50) more or less.

With the appurtenances and all the estate, title and interest of said party of the first part therein. And the said David E. James and Jennie M. James, his wife, do hereby covenant and agree that at the delivery hereof they are the lawful owners of the land and premises above granted and seized of a good and sufficient indefeasible estate of inheritance therein and that they will warrant and defend the same in the quiet and peaceable possession of said party of the second part his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seal- the day and year above written.

D. E. JAMES. [SEAL.]
JENNIE M. JAMES. [SEAL.]

Executed and delivered in the presence of—
GEORGE B. WOOD,
E. B. POND, AND
B. R. PETERS
For Mrs. James.

STATE OF KANSAS, } ss:
Wyandotte County, }

On this 13th day of April, A. D. 1869, before me, notary public in and for said county, came David E. James, to me personally known to be the same person who executed the *following* instrument, and duly acknowledged the execution of the same.

62

In testimony whereof I have hereto subscribed my name and affixed my official seal the day and year last above written; all interlineations made before signing.

[SEAL.] M. B. NEWMAN,
Notary Public.

STATE OF MICHIGAN, } ss:
County of Washtenaw, }

On this 17th day of April, A. D. 1869, before me, the county clerk in and for said county, came Jennie M. James, to me known to be the same person who executed the foregoing instrument, and duly acknowledged the execution of the same.

In testimony whereof I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

All interlineations made before signing.

[SEAL.] JOHN J. ROBINSON, *Clerk.*

[Endorsed:] Warranty deed from David E. James and Jennie M. James to Joseph E. Snyder.

STATE OF KANSAS, *Wyandotte County,* } ss:

This instrument was filed for record on the 5th day of February, A. D. 1870, at 11 o'clock a. m., and duly recorded in Record Book N, on page- 50 and 51.

JAMES A. CRUISE,
Register of Deeds.

Fees, $1.35, paid.

63 Plaintiffs next offered in evidence deed from David E. James and wife to James F. Joy, dated August 24th, 1868, and plat therewith, recorded in register of deeds' office, in Wyandotte county, Kansas, March 20th, 1869.

Objected to by counsel for the defendants as incompetent, irrelevant, and immaterial. The court overruled the objection; to which ruling of the court defendants at the time excepted.

The deed was in words and figures as follows, to wit:

[U. S. int. revenue stamp, $1.00, A. D. E. G. Sept. 28th, 1868.]

This indenture made this 24th day of August A. D. 1868, between David E. James and Jennie M. James, wife of the said David E. James both of the city of Wyandotte and county of Wyandotte and State of Kansas, parties of the first part, and James F. Joy of the city of Detroit, county and State of Michigan, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one thousand dollars ($1,000) to said parties of the first part paid, by said part- of the second part, the receipt of which is hereby acknowledged, hath, and doth by these presents grant, bargain, sell, alien, enfeoff, release and confirm unto the said party of the second part, and to his heirs and assigns forever, the following lots or parcels of land situated in the city of Wyandotte, and county of Wyandotte, and State of Kansas, described as follows, to wit:

Beginning at a point on the bank of the Missouri river, north fifty (50) degrees and twenty-five (25) minutes west four hundred and thirteen and one-half (413½) feet, and north fifty-nine (59) degrees and five (5) minutes west three hundred and eighty and one-half (380½) feet, and north sixty-two (62) degrees and five (5) minutes west, four hundred and ninety-eight and five-tenths (498.5) feet from a point on the State line fifteen hundred and eighty-two and one-fourth (1,582¼) feet from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west four hundred and seventy-nine an- seventy-one hundredths (479.71) feet; thence north twenty-eight and one-half (28½) degrees west ten hundred and eighty-six (1,086) feet; thence north sixty-one and one-half (61½) degrees east three hundred and fifty-eight feet (358) to the bank of the Missouri river;

thence south twenty-three (23) degrees and thirty-two (32) minutes east, three hundred and forty-five and thirty-four hundredths (345.34) feet; thence south thirty-seven (37) degrees and eleven (11) minutes east two hundred and seventy-nine and a quarter (279¼) feet; thence south forty (40) degrees and forty-five (45) minutes four hundred and seventy-six and five-tenths (476.5) feet to the place of beginning, containing ten (10) acres and being part of lot in plat of partition number fifteen (15) on file in the clerk's office of the first judicial district of Kansas, in Wyandotte county, in the case of Thomas Ewing Jr. *vs.* Wm. Weer *et al.* numbered and described as will more fully and at large appear, by reference to the plat of said city, recorded in the register's office, in and for said county, in Book of Plats number — page 3, together with all and singular the buildings and improvements, rights, liberties, privileges and appurtenances thereunto belonging or in any manner thereunto appertaining; and also the remainders, rents, issues, and profits thereof, and all the right, title and interest of said party of the first part, in and to the same or to any part thereof. To have and to hold the said described premises, and hereditaments hereby described and granted with the appurtenances unto the said party of the second part his heirs and assigns to their only proper use and behoof forever.

64 And the said parties of the first part hereby covenant with the said party of the second part, his heirs and assigns, that the said premises are free and clear from all incumbrances whatsoever, and the said parties of the first part will and their heirs and executors and administrators shall warrant and defend the same to the said party of the second part and his assigns against the lawful demands of all persons.

In witness whereof the said parties of the first part have hereunto set their hands and seal- the day and year first above written.

D. E. JAMES. [SEAL.]
JENNIE M. JAMES. [SEAL.]

Signed and sealed and delivered in the presence of—
A. B. BARTLETT.
HAVELLY JAMES.

STATE OF KANSAS, *County of Wyandotte,* } ss:

On this twenty-fourth day of August, A. D. 1868, before me, a notary public in and for said county, came David E. James and Jennie M. James, personally known to me to be the persons identical- known to me who executed the foregoing deed as a party of the first part, and acknowledged the same to be their own voluntary act and deed for the purpose therein mentioned.

And the — Jennie M. James, having been by me made acquainted with the contents and effect of said deed and by me examined separate and apart from her husband, acknowledged that she executed said deed and relinquished her right of dower in the premises therein described freely and voluntarily and without the compulsion of her husband.

[SEAL.] In witness whereof I have hereunto set my hand and affixed my seal of office.

A. B. BARTLETT,
Notary Public.

STATE OF KANSAS, }
Wyandotte County. }

I, Daniel O'Flaherty, do hereby certify that I was called on by D. E. James and George B. Wood to survey certain lands lying in Wyandotte county, Kansas, between the State line and the mouth of the Kansas river, and that I surveyed said lands in the presence of David E. James and Geo. B. Wood and platted the land to be deeded by said D. E. James to James F. Joy and intended to be incorporated and conveyed to said Joy by said James in the deed hereto annexed, and I do hereby certify that the land hereby described on the plat is the identical land I so surveyed and which was intended to be so conveyed.

DAN. O'FLAHERTY.

(Here follows map marked p. 65.)

66 Here in original case made is the plat referred to signed "Dan. O'Flaherty."

Endorsed: Recorded March 20, A. D. 1869, at 3 p. m. James A. Cruise, register of deeds.

67 Plaintiff- next offered in evidence a deed from James F. Joy to the Hannibal and St. Joe railroad, of date the 25th day of Sept., 1872; which deed was in words and figures as follows, to wit:

[U. S. revenue stamp.]

This indenture, made this 25th day of September, 1872, between James F. Joy and Mary B. Joy, his wife, of the county of Wayne, State of Michigan, of the first part, and the Hannibal and St. Joe Railroad Company, of the State of Missouri, of the second part, witnesseth:

That the said parties of the first part in consideration of the sum of one dollar ($1.00) to them paid have sold, and by these presents do grant and convey to the parties of the second part, their successors and assigns, all those tracts or parcels of land situated in the county of Wyandotte and State of Kansas, and described as follows, to wit:

Commencing at a point on the State line twelve hundred and ninety-three and ten hundredths (1,293.10) feet north from the section corner of section eleven (11) and fourteen (14), township eleven (11) south, range twenty-five (25) east; thence south sixty-one (61) degrees, fifty (50) minutes west eight hundred and ninety and one-half (890½) feet; thence north twenty-eight (28) degrees ten (10) minutes west a distance of two hundred and thirty-nine and three-fourths (239¾) feet, thence north sixty-one (61) degrees and fifty (50)

thence south twenty-three (23) degrees and thirty-two (32) minutes east, three hundred and forty-five and thirty-four hundredths (345.34) feet; thence south thirty-seven (37) degrees and eleven (11) minutes east two hundred and seventy-nine and a quarter (279¼) feet; thence south forty (40) degrees and forty-five (45) minutes four hundred and seventy-six and five-tenths (476.5) feet to the place of beginning, containing ten (10) acres and being part of lot in plat of partition number fifteen (15) on file in the clerk's office of the first judicial district of Kansas, in Wyandotte county, in the case of Thomas Ewing Jr. *vs.* Wm. Weer *et al.* numbered and described as will more fully and at large appear, by reference to the plat of said city, recorded in the register's office, in and for said county, in Book of Plats number — page 3, together with all and singular the buildings and improvements, rights, liberties, privileges and appurtenances thereunto belonging or in any manner thereunto appertaining; and also the remainders, rents, issues, and profits thereof, and all the right, title and interest of said party of the first part, in and to the same or to any part thereof. To have and to hold the said described premises, and hereditaments hereby described and granted with the appurtenances unto the said party of the second part his heirs and assigns to their only proper use and behoof forever.

64 And the said parties of the first part hereby covenant with the said party of the second part, his heirs and assigns, that the said premises are free and clear from all incumbrances whatsoever, and the said parties of the first part will and their heirs and executors and administrators shall warrant and defend the same to the said party of the second part and his assigns against the lawful demands of all persons.

In witness whereof the said parties of the first part have hereunto set their hands and seal- the day and year first above written.

D. E. JAMES. [SEAL.]
JENNIE M. JAMES. [SEAL.]

Signed and sealed and delivered in the presence of—
A. B. BARTLETT.
HAVELLY JAMES.

STATE OF KANSAS, } ss:
County of Wyandotte, }

On this twenty-fourth day of August, A. D. 1868, before me, a notary public in and for said county, came David E. James and Jennie M. James, personally known to me to be the persons identical- known to me who executed the foregoing deed as a party of the first part, and acknowledged the same to be their own voluntary act and deed for the purpose therein mentioned.

And the — Jennie M. James, having been by me made acquainted with the contents and effect of said deed and by me examined separate and apart from her husband, acknowledged that she executed said deed and relinquished her right of dower in the premises therein described freely and voluntarily and without the compulsion of her husband.

[SEAL.] In witness whereof I have hereunto set my hand and affixed my seal of office.

A. B. BARTLETT,
Notary Public.

STATE OF KANSAS, }
Wyandotte County. }

I, Daniel O'Flaherty, do hereby certify that I was called on by D. E. James and George B. Wood to survey certain lands lying in Wyandotte county, Kansas, between the State line and the mouth of the Kansas river, and that I surveyed said lands in the presence of David E. James and Geo. B. Wood and platted the land to be deeded by said D. E. James to James F. Joy and intended to be incorporated and conveyed to said Joy by said James in the deed hereto annexed, and I do hereby certify that the land hereby described on the plat is the identical land I so surveyed and which was intended to be so conveyed.

DAN. O'FLAHERTY.

(Here follows map marked p. 65.)

66 Here in original case made is the plat referred to signed "Dan. O'Flaherty."

Endorsed: Recorded March 20, A. D. 1869, at 3 p. m. James A. Cruise, register of deeds.

67 Plaintiff- next offered in evidence a deed from James F. Joy to the Hannibal and St. Joe railroad, of date the 25th day of Sept., 1872; which deed was in words and figures as follows, to wit:

[U. S. revenue stamp.]

This indenture, made this 25th day of September, 1872, between James F. Joy and Mary B. Joy, his wife, of the county of Wayne, State of Michigan, of the first part, and the Hannibal and St. Joe Railroad Company, of the State of Missouri, of the second part, witnesseth:

That the said parties of the first part in consideration of the sum of one dollar ($1.00) to them paid have sold, and by these presents do grant and convey to the parties of the second part, their successors and assigns, all those tracts or parcels of land situated in the county of Wyandotte and State of Kansas, and described as follows, to wit:

Commencing at a point on the State line twelve hundred and ninety-three and ten hundredths (1,293.10) feet north from the section corner of section eleven (11) and fourteen (14), township eleven (11) south, range twenty-five (25) east; thence south sixty-one (61) degrees, fifty (50) minutes west eight hundred and ninety and one-half (890½) feet; thence north twenty-eight (28) degrees ten (10) minutes west a distance of two hundred and thirty-nine and three-fourths (239¾) feet, thence north sixty-one (61) degrees and fifty (50)

minutes east, a distance of ten hundred and seventeen and one-half (1,017½) feet; thence south along State line two hundred and seventy-one and three-fourths (271¾) feet to the beginning, variation eleven (11) degrees east, containing five and twenty-five hundredths (5.25) acres more or less;

Also, commencing at a point on the State line, fifteen hundred and sixty-five and ten hundredths (1,565.10) feet north of the section corner of the sections eleven (11) and fourteen (14) townships eleven (11), south range twenty-five (25) east; thence south sixty-one (61) degrees fifty-one (51) minutes west, five hundred and seventy-five and one-half (575½) feet; thence north twenty-eight (28) degrees ten (10) minutes west, four hundred and fifteen and seventy-five hundredths (415.75) feet thence north sixty (60) degrees fifty (50) minutes east two hundred and ninety-four and one-half (294½) feet; thence south sixty-two (62) degrees east along the bank of the Missouri river, to place of beginning, five hundred and four (504) feet, containing four and fifteen hundredths (4.15) acres more or less.

Also, commencing at a point fifteen hundred and sixty-five and ten hundredths (1,565.10) feet north, sixty-two (62) degrees west, five hundred and four (504) feet and north fifty-eight and three-fourths (58¾) degrees west three hundred and eighty-two (382) feet, from the section corner of sections eleven (11) and fourteen (14), township eleven (11) south, range twenty-five (25) east; thence south sixty-one (61) degrees fifty (50) minutes west five hundred and fifty-three and one-half (553½) feet; thence north twenty-eight (28) degrees ten (10) minutes west three hundred and eighty-four (384) feet; thence north sixty-one (61) degrees fifty (50) minutes east three hundred and eighty-one and one-half (381½) feet, thence down the bank of the Missouri river fifty-two and one-fourth (52¼) degrees west four hundred and twenty-one (421) feet to the point of beginning variation eleven (11) degrees east, containing four and twelve hundredths (4.12) acres more or less.

Also, commencing at a point fifteen hundred and sixty-five and ten hundredths (1,565.10) feet north *N.* sixty-two (62) degrees west five hundred and four (504) feet, north fifty-eight and three-fourths (58¾) degrees, west three hundred and eighty-two (382) feet north, fifty-two and one-fourth (52¼) degrees, west four hundred and
68 twenty-one (421) feet; from section corner of sections eleven (11) and fourteen (14), township eleven (11), south range, twenty-five (25) east; thence up the bank of the Missouri river, north forty (40) degrees west, six hundred and ninety-eight (698) feet; thence north twenty-three and three-fourths (23¾) degrees west four hundred and five (405) feet; thence south sixty-one (61) degrees and fifty (50) minutes west three hundred and seventy-four (374) feet; thence south twenty-eight (28) degrees ten (10) minutes east, ten hundred and eighty-six and three-fourths (1,086¾) feet; thence north sixty-one (61) degrees fifty (50) minutes east four hundred and eighty-eight (488) feet, to a point of beginning, variations eleven (11) degrees east, containing nine and eighty-four hundredths (9.84) acres more or less with all the appurtenances and all the estate, title and interest of the said parties of the first part therein.

In witness whereof, the said parties of the first part *are* hereunto set their hands and seal the day and year above written.

J. F. JOY.
MARY B. JOY.

In presence of—
J. E. GRIFFITH.
JAMES JOY.

STATE OF MICHIGAN, } ss:
County of Wayne, }

On this the 25th day of September, A. D. 1872, before me, a notary public in and for said county, came James F. Joy and Mary B. Joy, his wife, to me personally known to be the same persons who executed the foregoing instrument, and duly acknowledged the execution of the same.

In testimony whereof I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

[SEAL.] J. E. GRIFFITH,
Notary Public, Wayne County, Michigan.

Recorded January 18th, 1873, at 2 p. m.

JAMES A. CRUISE,
Register of Deeds.

Vol. S, 354, 355.

69 Plaintiff- next offered and put in evidence, and in connection with the foregoing deed and in order to locate the four (4) acres of land, the plat of Kansas City, Kansas, and in connection therewith all accompanying documents; the plat was certified by the register of deeds of Wyandotte county, Kansas, on the 23rd day of May, 1885, and was filed May 3rd, 1869; the plat and accompanying documents were as herein set forth:

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, W. R. Wagstaff, judge of the 10th judicial district of the State of Kansas and president judge of the district court of said county, do hereby certify that William H. Bridges, by whom the above attestation was made, was at the date thereof register of deeds of said county, duly qualified, and that the same is in due form and made by the proper officer.

Dated May 23rd, 1885.

W. R. WAGSTAFF,
District Judge.

STATE OF KANSAS, } ss:
Wyandotte County, }

I, L. C. Trickey, clerk of the district court in and for said county, do hereby certify that Hon. W. R. Wagstaff, whose genuine signature is subscribed to the foregoing certificate, was at the date thereof

president judge of said court, duly commissioned, sworn, and acting.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at the city of Wyandotte, this 23rd day of May, 1885.

L. C. TRICKEY, *Clerk.* [L. S.]

STATE OF KANSAS, } ss:
Wyandotte County, }

I, William H. Bridges, register of deeds of said Wyandotte county, hereby certify that the annexed tracing and manuscript matter on eleven (11) pages hereto attached are correctly taken and copied from the original plan of Kansas City, Kansas, and original documents thereto attached, filed in my office, as appears by endorsement thereon May 3rd, 1869, and from the record of such plan and original documents made that day on Plat Book Number 1, or Book of Plats Number One (1), pages nine (9) and ten (10), in my office, and that I am the keeper of such original plans and original documents and of such record.

In witness whereof I have hereunto set my hand and official seal this 23rd day of May, 1885.

WM. H. BRIDGES,
Register of Deeds.

Certified copy of plat and certificate, $10.50.
Paid by Geo. W. Tourtelotte, per Jefferson Brumback.

W. H. BRIDGES,
Register of Deeds.

Description and Explanatory Notes, Dedication, etc., in Plan of Kansas City, Wyandotte County, Kansas.

Description and dedication of the town site of Kansas City, Kansas.

The town site of Kansas City, Kansas, situated upon part of fractional sections ten (10), eleven (11), and fourteen (14), in township numbered eleven (11) south, range twenty-five (25) east, in the county of Wyandotte, State of Kansas, lying north of the old bed of Turkey creek, east of the Kansas river, south of the Missouri river, and bounded on the east by the State line between Kansas and Missouri, *and* comprises the following-named tracts, viz:

Two (2) tracts of land belonging to George B. Wood, designated in accompanying plat by one being colored red and one tract colored green.

Two (2) tracts of land belonging to D. E. James (designated in plat by one being colored green and one colored red); one tract of land belonging jointly to Geo. B. Wood and N. McAlpine (designated in plat by being colored green), excepting that part of
70 lands of G. B. Wood situated and lying between the lands of Thomas Ewing on the south and the lands of James F. Joy on the north and east and James Street on the west (being a piece

of land sixty-six and one-half (66½) feet by three hundred and eighty-four (384) feet), and the piece or part of land lying between lands of Thomas Ewing on the south and lands of D. E. James on the north and between Armstrong street and the Kansas river, marked on plat reserved for private purposes, and also excepting lands of D. E. James between Armstrong street and Kansas river and bounded on the south by the lands of Geo. B. Wood and on the north by lands of J. H. Swope and marked reserved for private purposes.

The above-named tracts are described and bounded as follows, viz:

1. Tract of D. E. James (colored green on the accompanying plat), beginning on bank of Kansas river, thence north sixty-one (61) degrees fifty (50) minutes east three hundred and forty-eight (348) feet, south twenty-eight (28) degrees ten (10) minutes east three hundred (300) feet, north sixty-one (61) degrees and fifty (50) minutes east five hundred and eighty (580) feet, south twenty-eight (28) degrees ten (10) minutes east seven hundred and eighty-six and three-fourths (786¾) feet, south sixty-one (61) degrees fifty (50) minutes west to bank of Kansas river; thence along said bank with its meanderings to the beginning, being a part of the allotment numbered fifteen (15) made by decree of first district court of Wyandotte county, State of Kansas, in partition suit of Thomas Ewing, Jr., *et al. vs.* William Weer *et al.*, which decree with accompanying plat are now on file in the clerk's office of said court, and said initial point being at the northwesterly corner of said allotment, the metes and bounds of which are hereby referred to and made a part of this description.

2. Tract of Geo. B. Wood (colored red on accompanying plat), beginning on the bank of the Kansas river, thence north sixty-one (61) degrees fifty (50) minutes east along the southern boundary of lands of D. E. James above described eleven hundred and thirty-three (1,133) feet, south twenty-eight (28) degrees and ten (10) minutes east three hundred and eighty-four (384) feet, south sixty-one (61) degrees and fifty (50) minutes west to bank of Kansas river; thence along said bank to place of beginning, being part of allotment number fourteen (14) in above-mentioned decree, and said initial point being at the northwesterly corner of said allotment, the metes and bounds of which are hereby referred to as a part of this description.

3. Tract owned jointly by G. B. Wood and N. McAlpine (colored green on accompanying plat), beginning at a point on bank of Kansas river, thence north sixty-one (61) degrees fifty (50) minutes west fourteen hundred and fifty-five (1,455) feet, south twenty-eight (28) degrees ten (10) minutes east four hundred and fifteen and three-fourths (415¾) feet, south sixty-one (61) degrees fifty (50) minutes west to the bank of the Kansas river; thence along said bank, with meanders thereof, to place of beginning, being a part of allotment number twelve (12) in above-named decree, and said initial point being at the northwesterly corner of said allotment, the metes and

bounds of which are hereby referred to as a part of this description.

4. Tract of D. E. James (colored red in accompanying plat), beginning at the northeast corner of John Arthur's tract, thence north sixty-one (61) degrees fifty (50) minutes east five hundred and sixty-four and three-fourths (564¾) feet, and south twenty-eight (28) — 10 (10) minutes east eight hundred and forty (840) feet, and south 61 degrees 50 min. west 564¾ ft., north twenty-eight (28) degrees ten (10) minutes west eight hundred and forty (840) feet, being
71 allotment number eight (8) in decree above named, said initial point being at the northwesterly corner of said allotment, the metes and bounds of which are hereby referred to as a part of this description.

5. Tract of Geo. B. Wood (colored green in accompanying plat), beginning at the northeast corner of tract of D. E. James last described, thence north sixty-one (61) degrees fifty (50) minutes east four hundred and fifty-two (452) feet to State line; thence south along said State line six hundred and fifty and three-fourths (650¾) feet to section corner of fractional sections eleven (11) and fourteen (14); thence along said State line in all nine hundred and fifty-one and one-half (951½) feet south 61 degrees 50 min. west 434 feet, north 28 degrees 10 min. west 840 ft., being allotment number nine (9) in decree above mentioned, said initial point being at the northwesterly corner of said allotment, the metes and bounds of which are hereby referred to as a part of this description. Said town site of Kansas City, Kansas, is fully illustrated in the plat and survey made by Jno. McGee, surveyor, for G. B. Wood, D. E. James, and N. McAlpine and is divided into blocks, lots, avenues, streets, and alleys, the boundaries and extent of such streets and alleys being indicated by said plat, which is on the scale of two hundred (200) feet to the inch, and herewith attached for record on the record of plats of said county, to which reference is made. Streets: Sixth street is a continuation of Sixth streets of West Kansas City, Missouri, adjoining, being in same direction as Sixth street of Kansas City, Missouri, continued to meet James street, and is eighty (80) feet wide.

James street, eighty (80) feet width; Wood street, sixty (60) feet width, adjoining the land of said D. E. James and described as allotment number eight (8), where the same is — feet wide. Armstrong street, eighty (80) feet wide; Ewing street, sixty (60) feet wide; Joy street, sixty (60) feet wide; Water street, sixty (60) feet wide, are each and all at right angles to the line dividing lands of the Kansas Pacific railway from the lands of G. B. Wood, D. E. James, Dr. John Arthur, and estate of Silas Armstrong, deceased, and have a course or bearing of north twenty-eight (28) degrees ten (10) minutes west, variation of needle being eleven (11) degrees east.

2nd, 3rd, 4th, 5th, 6th, west of James street, and 8th street are all parallel to said dividing line and at right angles to above-named streets and are each sixty (60) feet wide.

6. One-half (½) of Pacific avenue is thirty-five (35) feet wide and

is parallel — and lying alongside of said dividing line. State street is thirty (30) feet wide, the other half (½) of it being thirty (30) feet and lying in Missouri, alongside, making a street of sixty (60) feet width, running due north and south.

Alleys.—All alleys are sixteen (16) feet wide except Railroad alley, which is thirty (30) feet wide. Lots: All lots, except in case of those designated by letters, are numbered by commencing on Pacific avenue, as above, and will be known by their numbers in the street on which they front.

All regular lots are twenty-four (24) feet front and one hundred and twenty (120) feet deep. The following lots, being of irregular sizes and figures, have the following accompanying description and dimensions, viz: Lots six (?) (61) and sixty-two (62), on Wood street; sixty-one (61) and sixty-two (62), on James street, and sixty-one and sixty-two (61 & 62), on Ewing street, are each twenty-five (25) feet front by one hundred and twenty (120) feet deep. Lots having the odd numbers from nine (9) to sixty-one (61), inclusive, on Ewing street, have forty-eight and one-half (48½) feet of their length or depth on lands of G. B. Wood and the remainder of their
72 length, seventy-one and one-half (71½) feet, on lands of D. E. James. Lots one (1), three (3), five (5), and seven (7), on same street, have seventy-one and one-half (71½) feet of their depth on lands of D. E. James. Lot one (1), on same street, is fifty-nine and three-fourths (59¾) feet long on Pacific avenue and twenty-three (23) feet of it fronts on State street; is on lands of D. E. James. Lots one (1), three (3), five (5), and seven (7) aforesaid each have a front of twenty-seven (27) feet two (2) inches on State street. Lot nine (9) aforesaid has a front of nineteen (19) feet on State street and seven (7) feet on Ewing street. Lot thirty (30), on Ewing street, is eight (8) feet wide at the south end and has a front of one hundred and twenty (120) feet on Ewing street and seventy-two and one-half (72½) feet on Eighth street.

Lot thirty-two (32), Ewing street, has a front on State street twenty-seven (27) feet and two (2) inches and fronts one hundred and four (104) feet on Eighth street. Lot thirty-four (34) on Ewing street fronts four (4) feet on State street and twenty and one-fourth (20¼) feet on the alley. Lots one hundred — twenty-two (122) on Water street, one hundred and twenty-one (121) and one hundred and twenty-two (122) on Armstrong street, one hundred and twenty-one (121) and one hundred and twenty-two (122) on Wood street, one hundred and twenty-one (121) and one hundred and twenty-two (122) on James street, and one hundred and twenty-one (121) and one hundred and twenty-two (122) on Ewing street have *east* three (3) feet frontage on lands owned jointly by G. B. Wood and N. McAlpine and, excepting lots one hundred and twenty-one (121) and one hundred and twenty-two (122) on Ewing street, the remainder of their frontage, twenty-one (21) feet, on lands of the estate of Silas Armstrong. Lots one hundred and fifty-two (152) on Water street, one hundred and fifty-one (151) and one hundred and fifty-two (152) on Armstrong street, one hundred and fifty-one (151) and one hundred and fifty-two (152) on Wood street, one hundred and fifty-one (151)

and one hundred and fifty-two (152) on James street, one hundred and fifty-one (151) and one hundred and fifty-two (152) on Ewing street have each seventeen (17) feet front, being on lands of G. B. Wood and N. McAlpine. Lots one hundred and seventy-four (174) on Armstrong street and one hundred and seventy-three (173) and one hundred and seventy-four (174) on Wood street and one hundred and seventy-three (173) on James street have each three (3) feet front, being on lands of Geo. B. Wood. Lots two hundred and two (202) on Armstrong street, two hundred and one (201) and two hundred and two (202) on Wood street, and two hundred and one (201) on James street have each ten (10) feet of their front on lands of G. B. Wood and the remainder of their front or width, fourteen (14) feet, on lands of D. E. James.

Lot — on east end of lands owned jointly by G. B. Wood and N. McAlpine has a front on 5th street of sixty-four (64) feet and depth of one hundred and eighty-five (185) feet. Lot Y has a front of sixty-four (64) feet and depth of seventeen (17) feet. Lots M, N, O, & P have each a front *of* on State street of twenty-seven (27) feet three (3) inches and a rectangular width of twenty-four (24) feet. Lot M, on its north side, is one hundred and forty and three-fourths (140¾) feet long. Lot Q has a front of forty (40) feet on State street. Lot R has a front of seventy (70) feet on State street. Lot S has a front of one hundred and four (104) feet on State street and is ten and one half (10½) feet wide at south end.

The strip of land of D. E. James lying between lots two hundred and sixty (260) Armstrong street, two hundred and fifty-nine (259) and two hundred and sixty (260) Wood street, and two hundred and fifty-nine (259) James street, and the lands of Jos. E. Snyder is eighteen (18) feet wide. The dividing line between contigu-
73 ous lots has a bearing of north sixty-one (61) degrees fifty (50) minutes east or south sixty-one (61) degrees fifty (50) minutes west; the magnetic variation used in courses or bearings named in this description and in making the survey of the several tracts above described of the streets, avenues, alleys, blocks, lots, etc., that of eleven (11) degrees east.

Know all men by these presents that we, Geo. B. Wood and his wife, Annie B. Wood, and D. E. James and his wife, Jennie James, N. McAlpine and his wife, Maria A. McAlpine, all of Wyandotte county, State of Kansas, proprietors of the several parcels of land as above described and set forth in this deed and as shown by the accompanying plat, do hereby convey to the public for their use the streets, avenues, alleys, named in the foregoing description according to the accompanying plat to the extent that the said streets, avenues, alleys, are numbered upon said plat within the boundaries of the tracts owned by each of us individually, reserving to ourselves and our legal representatives all rights and privileges whatsoever in und upon said streets, avenues, and alleys. It is hereby expressly understood that no right or privilege whatsoever is hereby granted, conveyed, or dedicated to any purchaser, excepting the simple easement or right of travel over said streets, avenues, or alleys, but that

all other rights and privileges are hereby expressly reserved in the undersigned proprietors.

Neither is there any right or privilege granted herein to the riparian rights on the Kansas river now owned by said proprietors or to any ferry or bridge privilege whatsoever.

In testimony whereof the said D. E. James and his wife, Annie M. James; George B. Wood and his wife, Annie B. Wood; N. McAlpine and his wife, Maria W. McAlpine, have hereunto set their hands and seals this 3rd day of May, A. D. 1869.

All interlineations and marginal notes made before signing.

GEORGE B. WOOD. [SEAL.]
D. E. JAMES. [SEAL.]
NICHOLAS McALPINE. [SEAL.]
MARIAH W. McALPINE. [SEAL.]
ANNIE B. WOOD. [SEAL.]

STATE OF KANSAS, } ss:
Wyandotte County, }

On this 3rd day of May, A. D. 1869, before me, the register of deeds in and for said county, appeared Geo B. Wood and Annie B. Wood, his wife; David E. James, and Maria W. McAlpine and Nicholas McAlpine, personally known to me to be the same persons who executed the foregoing plat and dedication, and duly acknowledged the execution of the same.

In testimony whereof I have hereunto set my hand and affixed my official seal this 3rd day of May, A. D. 1869.

JAMES A. CRUISE,
[OFFICIAL SEAL.] *Register of Deeds for Wyandotte County.*

Filed May 3rd, 1869.

JAMES A. CRUISE,
Register of Deeds.

(Here follows map marked p. 74.)

75 Plaintiffs next offered in evidence two sheriff's deeds to Lafayett Traber, one dated April 19th, 1875, and the other March 8th, 1879.

And also in connection therewith the proceedings in attachment in the case of C. F. Welland against Joseph E. Snyder and Henry R. Seeger *vs.* Joseph E. Snyder.

Counsel for plaintiffs said:

One of these sheriff's deeds was made later than the other to correct inaccuracies, and these are certified transcripts of proceedings. These transcripts purport to be a transcript of the entire proceedings, and the two sheriff's deeds are based upon these proceedings. I have also the original papers—the original files in *this* cases—and I offer in connection with these transcripts the original orders of attachment and the sheriff's return thereon, including original appraisements.

The transcripts include each an affidavit of W. H. Ryus, but that affidavit in each case is not offered as evidence of the truth of the statements therein as proof in this case.

To which offer on the part of the plaintiffs the defendants object, and to each and every one of said papers and documents so offered, to wit, the certified transcript in the case of Welland *vs.* Snyder and the certified transcript in the case of Seager *vs.* Snyder, and to each of the two sheriff's deeds, to all endorsements thereon, and the returns of the sheriff, each and the whole being incompetent, irrelevant, and immaterial.

The court overruled the objection; to which ruling of the court defendants at the time except.

The deed from the sheriff to Traber was in words and figures as follows, to wit:

76 *Sheriff's Deed.*

Know all men by these presents, that whereas at the September term of the district court of the tenth judicial of the State of Kansas sitting within and for the county of Wyandotte, begun and held at Wyandotte city in said county, on the 7th day of September, A. D. 1874, to wit on the 10th day of September, A. D. 1874, Henry R. Seegar, did recover a judgement in said court against Joseph E. Snyder in an action numbered 1734 on the appearance docket of said court wherein Henry R. Seegar was plaintiff and Joseph E. Snyder was defendant, for the sum of five hundred and fifteen dollars ($515.00) as debt, and twenty-seven dollars and twenty-five cents ($27.25) as costs, and by decree ordered that the lands and tenements described in the order of sale hereinafter set out should be charged with the payment of said judgement, and sold by the sheriff of said county as upon execution.

And whereas, the said Henry R. Seager afterwards on the 24th day of November A. D. 1874, caused to be issued out of the clerk's office of said court a special execution or order of sale on the said judgement and decree of that date, in the words and figures following to wit:

THE STATE OF KANSAS,
Tenth Judicial District, Wyandotte County, } *ss:*

At a session of the district court, sitting within and for said county of Wyandotte, begun and held at the court-house, in the city of Wyandotte, in said county, on the 10th day of September, A. D. 1874, as by statutes required—there being present Hon. Hiram Stevens, judge of said judicial district, and E. S. W. Drought, sheriff, and G. W. Betts, clerk of the district court of said county—the following proceedings were had:

THURSDAY, *September* 10*th*, 1874.

HENRY R. SEEGAR
vs. } No. 1734.
JOSEPH E. SNYDER.

Now, at this day, comes the plaintiff, by Gage and Ladd and Brumback and Traber, his attorneys, and files herein proof *for* service by publication duly and legally made on the defendant which notified him of the pendency and object of this action and suit, which publication was made for three consecutive weeks in the Wyandotte Gazette, a newspaper published and printed weekly in the city of Wyandotte, county of Wyandotte and State of Kansas, and of general circulation in said county.

Whereupon such service is approved by the court; and this cause coming on regularly for hearing, and the same being now heard by the court upon the petition, evidence, and proof, and the court, being fully advised in the premises, finds that said defendant has been duly and legally notified of the pendency and object of this suit, and that all and singular the allegations in said plaintiff's petition are true, and that said defendant is justly and legally indebted to said plaintiff in the sum of five hundred and fifteen dollars ($515.00). It is therefore considered and adjudged by the court that said plaintiff have and recover of said defendant the said sum of five hundred and fifteen dollars ($515.00) and his costs herein, and that the judgement herein bear interest at the rate of six per cent. per annum.

And it is further ordered and adjudged by the court that said plaintiff have hereof execution against the said real estate herein attached, situated in the county and State aforesaid and described: Beginning at a point six hundred and forty (640) feet two (2) inches south of sixty-one (61) degrees and thirty (30) minutes west from another point thirty-six hundred and four and one-half (3,604½) feet north twenty-eight (28) degrees and thirty (30) minutes
77 west from the southeast corner of section eleven (11), township eleven (11), of range twenty-five (25), in Wyandotte county, Kansas, and running from said first-named point south sixty-one (61) degrees and thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to the beginning; also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point thirty-five hundred and four and one-half (3,504½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), in township eleven (11), range twenty-five (25), in said Wyandotte county, and running from said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet;

thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to the place of beginning.

Also beginning at a point six hundred and forty (640) feet and two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point thirty-four hundred and four and one-half (3,404½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section number eleven (11), in township eleven (11), of range twenty-five (25), of said county of Wyandotte, and running from said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning.

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, G. W. Betts, clerk of the district court in and for said county of Wyandotte, do hereby certify that the within and foregoing is a full, true, and correct copy of certain proceedings had in said court in the case therein entitled as the same appears of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Wyandotte, this 24th day of November, A. D. 1874.

[SEAL.] G. W. BETTS, *Clerk.*

78 STATE OF KANSAS, } ss:
Tenth Judicial District, Wyandotte County, }

To the sheriff of the county of Wyandotte, in said State, Greeting:

These are therefore to command you that of the said described lands and tenements you cause to be made the debt and costs aforesaid, together with costs of increase this day taxed at five dollars ($5.00) and ninety-five cents and the accruing costs hereon, and that you have the same before the court aforesaid in sixty (60) days from this date, in the city of Wyandotte and county aforesaid, and that you then and there certify how you shall have executed this writ.

Witness my hand and the seal of said court affixed, at my office, in the city of Wyandotte, on this the 24th day of November, A. D. 1874.

[SEAL.] G. W. BETTS, *Clerk.*

And the said special execution or order of sale duly came to the hands of E. S. W. Drought, sheriff of said county of Wyandotte aforesaid, on the 24th day of November, A. D. 1874, to be executed.

In pursuance of which the said sheriff caused the said described

property to be duly and impartially appraised by three disinterested householders of said county of Wyandotte upon actual view, they having been first duly sworn by the sheriff so to do.

When having forthwith, to wit, on the 3rd day of December, A. D. 1874, deposited with the clerk of said court a true copy of said appraisement, and after having given due notice of the time and place of sale by advertisement published more than thirty (30) days prior thereto in the Wyandotte Gazette, a public newspaper printed and of general circulation in said county of Wyandotte, offered for sale and sold the hereinafter-described property at public auction at the court-house, in said county, to Lafayette Traber for the sum of one thousand and two dollars ($1,002), the same being the highest bid made for the said hereinafter-described property; which sale was duly returned to the said court and by the said court, at its April term, A. D. 1875, to wit, on the — day of April, A. D. 1875, examined and confirmed, and the said sheriff was ordered to convey, as by statute required, the said lands and tenements so sold as aforesaid to said L. Traber:

Now, I, E. S. W. Drought, sheriff of said county of Wyandotte, in consideration of the premises and by virtue of the powers in me vested by law, do hereby give, grant, and convey unto the said L. Traber and to his heirs and assigns the lands and tenements so sold as aforesaid and bounded and described as follows, to wit:

Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-six hundred and four and one-half (3,604½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and running from said first-named point south sixty-one (61) degrees and thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east 100 ft.; thence north 61 deg. 30 min. east 289 ft.; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to beginning.

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point thirty-five hundred and four and one-half (3,504½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven,
79 (11), range twenty-five (25), in the said Wyandotte county, and running from the said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to the place of beginning.

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west

from another point thirty-four hundred and four and one-half (3,404½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, and running from said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to the place of beginning:

To have and to hold to him, the said Traber, and to his heirs and assigns forever, in as good and perfect estate as was vested in the said Joseph E. Snyder at or after the time the same became liable for the payment of the said debt.

In testimony whereof I, E. S. W. Drought, sheriff as aforesaid, have hereto set my hand this 19th day of April, A. D. 1875.

E. S. W. DROUGHT,
[SEAL.] *Sheriff of Wyandotte County, Kansas.*

STATE OF KANSAS,
County of Wyandotte, } *ss:*

On this 19th day of April, A. D. 1875, before me, the clerk of the district court in and for said county and State, appeared E. S. W. Drought, sheriff of said county of Wyandotte, to me personally known to be the same person who executed the foregoing deed as such sheriff, and duly acknowledged the execution of the same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court the day and year last herein written.

[SEAL.] G. W. BETTS, *Clerk.*

STATE OF KANSAS,
County of Wyandotte, } *ss:*

Received for record the 23rd day of April, A. D. 1875, at 2 o'clock p. m., and duly recorded in Liber X of Deeds, on page- 138, 139, and 140, 141, and 142.

——— ———,
Register of Deeds.

Fees, $3.50, paid.

80 And the second deed from the sheriff to Traber is in words and figures as follows, to wit:

Know all men by these presents: That whereas, at the September term of the district court for the tenth judicial district of the State of Kansas, sitting in and for the county of Wyandotte, begun and held at Wyandotte city on the 7th day of September, A. D. 1874, to wit: on the 10th day of September, 1874, C. F. Welland did recover judgment in said court against Joseph H. Snyder in an action numbered 1735, on the appearance docket of said court for the sum

of three hundred and eighty-seven dollars ($387.00) as debt and thirty-one and twenty-hundredths dollars ($31.20) as costs.

And whereas, at the same term of said court and on the same day, Henry R. Seegar did also recover judgment in the said court against the said Joseph H. Snyder in an action numbered 1734 on the appearance docket of said court for the sum of five hundred and fifteen dollars ($515.00) as debt and twenty-seven dollars and twenty-five cents ($27.25) as costs.

And whereas, as a part of each of the judgments aforesaid it was therein and thereby also ordered, adjudged and decreed that the lands and tenements therein described, as said lands and tenements are hereinafter described, should be charged with the payment of such judgment and sold by the sheriff of said county as upon execution;

And whereas, afterwards on the 24th day of November A. D. 1874 two special executions or orders of sale viz:—one on each of the judgments aforesaid were issued from said court by the clerk thereof under his hand and the seal of said court both directed to the sheriff of said county and each commanding that of said lands and tenements hereinafter, as in said special execution described said sheriff cause to be made the debt and costs named in said execution, the said lands and tenements being situated in the said county of Wyandotte and State of Kansas, and bounded as follows:

First parcel: Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west, from another point thirty-six hundred and four and one-half (3,604½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), and running from said first-named point south of sixty-one (61) degrees thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to the beginning.

Second parcel—Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-five hundred and four and one-half (3,504½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25) and running from said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet, thence south twenty-eight (28) degrees, thirty (30) minutes east, one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to the place of beginning.

81 Third parcel:—Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred and four and one-half (3,404½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25) and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west, one hundred (100) feet to the place of beginning.

And whereas, the said two special executions or orders of sale each came to the hand of E. S. W. Drought, the then sheriff of said county, on the said 24th day of November, A. D. 1874, to be executed in pursuance of which said sheriff caused said real property to be duly and impartially appraised by R. E. Cable, Robert Salton and Thomas Appleby Shaw three (3) disinterested householders of said county upon actual view they having been by said sheriff first duly sworn so to do and forthwith on the 3rd day of December, A. D. 1874, said householders returned to said sheriff under their hands their two certificates of an estimate of the real value of said property and real estate wherein each of said then parcels of land were and are appraised to be at the value of five hundred dollars ($500.00),—which certificates were attached one to each of said special executions and were with said executions deposited with and now are on file in the office of the clerk of said court.

And whereas, after having given public notice of the time and place of sale and a description of the property to be sold and where situated by advertisement published for more than thirty (30) days prior to said sale in the Wyandotte Gazette, a public newspaper printed and published and of general circulation in said county of Wyandotte, reciting among other things that said land would be sold by virtue of both said special executions, said Sheriff Drought offered for sale and sold the whole of said property and real estate at public auction at the court-house in said county on the 20th day of January, A. D. 1875, to Lafayette Traber of the city of Kansas in the county of Jackson and State of Missouri, in separate parcels hereinbefore described and for the sum of three hundred and thirty-four dollars ($334.00) for each parcel, the same being more than two-thirds (⅔) of the appraised value and being the highest and best bids made for said property and amounting in the aggregate to the sum of one thousand and two dollars ($1,002.00), which said sum was then and there by said purchaser paid to said Sheriff Drought who acknowledged the receipt thereof in his deed hereinafter recited.

And whereas, said sale was returned to said court at its April term A. D. 1875 by said Sheriff Drought, which return as shown by written endorsements at that time made upon both said special executions by said sheriff shows that said sale was made under and

by virtue of the said execution issued in favor of Henry R. Seeger, but by mistake does not show that said sale was made under and by virtue of the said executions issued in favor of C. F. Welland.

And whereas, by two orders duly made and entered of record in said court at the term last aforesaid, and on the — day of April, A. D. 1875 to wit: one in each of the cases aforesaid, it is shown that the said sale was made under and by virtue of both said special executions and that said sale was by the said court examined and confirmed and also that the said sheriff was by each of said entries of record ordered by the court to convey unto the said Lafayette Traber as by statute required the lands and tenements so sold as aforesaid.

82 And whereas, the said Drought as such sheriff did on the 19th day of April A. D. 1875 duly make, execute and deliver unto the said Lafayette Traber a deed to the whole of said lands and tenements under and by virtue of said execution in favor of Henry R. Seeger which deed is now of record in the office of the register of deeds in and for said county of Wyandotte in Deed Book X, at pages 138, 139, 140, 141, and 142, to which deed and the record thereof, reference is hereby made.

And whereas, no deed of said lands has ever been made to the said Lafayette Traber under the said executions in favor of C. F. Welland.

And whereas, at the December term of said court A. D. 1878, on December 30th, 1878 upon the motion of the said Lafayette Traber and the said former sheriff E. S. W. Drought, duly made and filed in said court, the said court did by its order duly made and entered of record, permit, order and direct the said former sheriff to amend his return of sale to the execution in favor of C. F. Welland aforesaid, so as to show a sale thereunder in accordance with the facts regarding said sale hereinbefore recited, which said return was at the time last aforesaid in open court by the said former sheriff so amended, which amended return is now on file with and attached to the special execution last aforesaid in said court.

And whereas, the said Lafayette Traber at the term and on the day last aforesaid filed his motion in said court reciting the sale aforesaid under both said executions as hereinbefore stated that said purchase-money has been duly paid to said sheriff Drought and that no deed has been made under the Welland execution as aforesaid; and praying that a certificate to the present sheriff of said county of Wyandotte be granted from said court signed by the clerk thereof setting forth that sufficient proof has been made to the court that such sale was fairly and legally made, and directing the present sheriff to make a deed to said property so sold to said Lafayette Traber under and by virtue of said two (2) executions.

And thereupon said court by its entry of record orders as follows:

"And sufficient proof is now made to this court that such sale was fairly and legally made by the said sheriff E. S. W. Drought as sheriff of said county of Wyandotte to said Lafayette Traber for the sum of one thousand and two ($1,002) dollars of the land described

in said executions which sale was made under and by virtue of said two executions.

"And proof is also made to said court that the purchase-money for said land has been fully paid by said Traber. And the court having *having* carefully examined the proceedings of said E. S. W. Drought under both said executions is satisfied that said sale has in all respects been made in conformity to the provisions of article twenty (20) chapter 80 of the General Statutes of the State of Kansas and approves such sale and the court now here directs the clerk to make an entry upon the journal of this court, that this court is satisfied with the legality of said sale and that an order that William H. Ryus the present sheriff of Wyandotte county, Kansas, make to the said Lafayette Traber a deed for said lands and tenements the time of service of said Drought as sheriff (the officer who had made said sale) having heretofore expired since the making of said sale."

And whereas, on the 30th day of December A. D. 1878, there was issued by the clerk of said court under his hand and the seal of said court and directed and delivered to me the undersigned present sheriff of said county of Wyandotte, such certificate and order of the court to make and deliver to said Lafayette Traber a deed of conveyance of said lands and tenements so purchased by him as aforesaid.

Now therefore, I William H. Ryus, sheriff of said county of Wyandotte in consideration of the premises and by virtue of the powers in me vested by law do hereby give, grant and convey unto
83 said Lafayette Traber and to his heirs and assigns the lands and tenements so sold as aforesaid viz: Every and all of the three (3) several parcels of land hereinbefore described.

To have and to hold to him, the said Lafayette Traber and to his heirs and assigns forever in as good and perfect an estate as was vested in the said Joseph E. Snyder at or after the time the same became liable for the payment of the said debts.

In testimony whereof, I, William E. Ryus, sheriff as aforesaid, have hereunto set my hand and seal on this eighth day of March A. D. 1879.

W. H. RYUS,

[SEAL.] *Sheriff of Wyandotte County, Kansas.*

STATE OF KANSAS, } ss:
County of Wyandotte, }

Be it remembered that on this 8th day of March, A. D. 1879, before me, the undersigned, the register of deeds within and for said county and State, personally appeared William H. Ryus, sheriff of the said county of Wyandotte, to me personally known to be the same person who executed the foregoing deed as such sheriff, and duly acknowledged the execution of the same.

In testimony whereof I have hereto set my hand and affixed my official seal the day and year last herein written.

J. S. CLARK,

[LEAL.] *Register of Deeds.*

STATE OF KANSAS, } ss:
Wyandotte County, }

Filed for record this 10th day of March, A. D. 1879, at 10 o'clock a. m., and duly recorded in Record Number "4," on pages 625, 626, 627, 628, and 629.

J. S. CLARK,
Register of Deeds.

84 And the certified transcript in the attachment proceedings in the case of Welland *vs.* Snyder is in words and figures following, to wit:

In the Tenth Judicial District, County of Wyandotte and State of Kansas.

C. F. WELLAND, Plaintiff,
against
JOSEPH E. SNYDER, Defendant.

Petition.

The plaintiff says—1st cause of action:

1st. His first cause of action is founded upon a promissory note of which the following is a copy:

$50.00. KANSAS CITY, *February 8th*, 1869.

Thirty days after date I promise to pay to the order of C. F. Welland fifty dollars at the German Savings Association, with interest at ten (10) per cent. from date, value received.

JOSEPH E. SNYDER.

2nd. There is now due from the defendant to the plaintiff the sum of fifty dollars ($50.00), with interest at ten (10) per cent. per annum from the 8th day of February, 1869.

2nd cause of action:

1st. His second cause of action is founded upon a promissory note of which the following is a copy:

$50.00. KANSAS CITY, *February 8th*, 1869.

Sixty days after date I promise to pay to the order of C. F. Welland fifty dollars at the German Savings Association, with interest at ten per cent. per annum from date, with value received.

JOSEPH E. SNYDER.

2nd. There is due from the defendant to the plaintiff on said note the sum of fifty dollars, with interest at ten (10) per cent. from the 8th day of February, 1869.

3rd cause of action:

1st. His third cause of action is founded upon a promissory note of which the following is a copy:

$25.00. KANSAS CITY, *February 8th*, 1869.

Ninety days after date I promise to pay to the order of W. F. Welland twenty-five dollars at the German Savings Association, with 10 per cent. interest from date, value received.

JOSEPH E. SNYDER.

2nd. There is now due from the defendant to the plaintiff on said note the sum of twenty-five dollars ($25.00), with interest at ten (10) per cent. from the 8th day of February, 1869.

Fourth cause of action:

1st. His fourth cause of action is founded upon a promissory note of which the following is a copy:

$125.00. KANSAS CITY, *February 8th*, 1869.

Ninety days after date I promise to pay to the order of C. F. Welland one hundred and twenty-five dollars, with interest at 10 per cent. from date, value received.

JOSEPH E. SNYDER.

2nd. There is now due the plaintiff from the defendant on said note the sum of one hundred and twenty-five dollars, with interest thereon from the 8th day of February, 1869, at ten per cent.

85 3rd. The plaintiff asks judgement against the defendant for the sum of two hundred and fifty ($250.00) dollars, with interest thereon from the 8th day of February, 1869, at ten (10) per cent. per annum.

BRUMBACK AND TRABER,
Attorneys for Plaintiff.

THE STATE OF KANSAS, } ss:
County of Wyandotte, }

L. Traber, being duly sworn according to law, deposes and says that he is one of the attorneys of the plaintiff in the above-entitled cause and as such makes this affidavit; that the nature of plaintiff's claim is for money due him on four (4) promissory notes, copies of which are fully set out in the petition above.

That the amount which affiant believes plaintiff ought to recover is two hundred and fifty dollars ($250.00), with interest at ten (10) per cent. on one hundred and twenty-five dollars ($125.00) from the 8th day of February, 1869, and one hundred and twenty-five dollars ($125.00), with interest thereon at ten (10) per cent. from the 8th day of February, 1869; that said defendant is a non-resident of the State of Kansas.

L. TRABER,
Attorney for Plaintiff.

Sworn to and subscribed in my presence this 16th day of May, 1874.

G. W. BETTS, *Clerk*,
P'r J. W. REED, *D. C.*

I agree and bind myself to pay all costs that may be adjudged against the plaintiff, Henry R. Seeger, in the case of H. R. Seeger *vs.* Joseph E. Snyder in the Wyandotte county, Kansas, district court.

O. SANER.

Approved.

G. W. BETTS, *Clerk*,
Per J. W. REED, *D. C.*

Endorsed: No. 1735. C. F. Welland *vs.* Joseph E. Snyder. Petition. Filed May 16th, 1874. G. W. Betts, clerk, per J. W. Reed, D. C. Brumback and Traber, attorneys for plaintiffs.

86 UNITED STATES OF AMERICA, } *ss:*
Tenth Judicial District, Wyandotte County, }

The State of Kansas to the sheriff of Wyandotte county, State of Kansas, Greeting:

You are hereby commanded to notify Joseph E. Snyder, the defendant, that he has been sued by C. F. Welland, plaintiff, in the district court of the State of Kansas, sitting within and for the county of Wyandotte, and that unless he answers by the 15th day of June, A. D. 1874, the petition of said plaintiff against him filed in the clerk's office of the court aforesaid the same will be taken as true and judgement rendered accordingly. You will make the return of this summons on the 28th day of May, 1874.

Witness my hand and the seal of said court affixed, at my office, in the — day of May, A. D. 1874.

G. W. BETTS, *Clerk*,
[SEAL.] Per J. W. REED, *D. C.*

Endorsed: Suit brought for the recovery of money. Amount claimed, $250.00, with interest from the 8th day of February, A. D. 1869, at the rate of ten (10) per cent. per annum. G. W. Betts, clerk, per J. W. Reed, D. C.

STATE OF KANSAS, } *ss:*
Wyandotte County, }

Received this summons on the 16th day of May, 1874, and served the same in my county by the within-named Joseph E. Snyder not found in my county this the 26th day of May, A. D. 1874.

E. S. W. DROUGHT, *Sheriff*,
By W. H. RYUS, *Under Sheriff.*

Fees: Service, $5.00; mileage, .20.

[Endorsed:] No. 1735. Appearance docket "D," district court, Wyandotte county. Summons. Issued May 16th, A. D. 1874. Returnable May 26th, 1874. C. F. Welland *vs.* Joseph E. Snyder. Brumback and Traber, plaintiff's attorneys. Filed May 25th, A. D. 1874. G. W. Betts, clerk.

Order of Attachment, Appraisement, and Return.

Attachment.

In the District Court of the State of Kansas in and for the County of Wyandotte.

C. F. WELLAND, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant.

The State of Kansas to the sheriff of Wyandotte county, in said State, Greeting:

You are hereby commanded to attach and safely keep the lands, tenements, goods, chattels, stocks, rights, credits, moneys, and effects of the defendant, Joseph E. Snyder, in your county and not exempt by law from being applied to the payment of the claim of the plaintiff, or so much thereof as will satisfy his claim, for two hundred and fifty dollars ($250.00), with interest at the rate of ten (10) per cent. per annum from the eighth (8th) day of February, A. D. 1869, and fifty dollars ($50.00), the probable costs of this action, and of your proceedings hereunder make due return within ten (10) days from the date hereof.

Witness my hand and the seal of said court affixed, at my office, in the city of Wyandotte, this the sixteenth (16th) day of May, A. D. 1874.

[SEAL.] G. W. BETTS, *Clerk*,
Per J. W. REED, *D. C.*

87 *Appraisement in Attachment Attached to Return of Sheriff on Order of Attachment.*

In the District Court of the State of Kansas in and for the County of Wyandotte, *ss:*

C. F. WELLAND
vs.
JOSEPH E. SNYDER.

We, the undersigned, W. H. Ryus, under sheriff of said county of Wyandotte, with F. W. Drought and S. Bolmer, householders of said county, do hereby make a true inventory and appraisement of all the property attached by the said sheriff by virtue of the order of attachment in said cause issued and now in his hands for execution as follows, to wit:

Lands and Tenements in said County.

Beginning at a point six hundred and forty (640) feet and two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-six hundred and four and one-half (3,604½) feet

north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section number eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and running from said first-named point south sixty-one (61) degrees thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to beginning, at the sum of four hundred and thirty-three dollars and thirty-three and one-third cents ($433.33\frac{1}{3}$).

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point thirty-five hundred and four and one-half ($3,504\frac{1}{2}$) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of four hundred and thirty-three dollars and thirty-three and one-third cents ($433.33\frac{1}{3}$).

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred and four and one-half ($3,404\frac{1}{2}$) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, State of Kansas, and running from said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of four hundred and thirty-three dollars and thirty-three and one-third cents ($433.33\frac{1}{3}$).

E. S. W. DROUGHT, *Sheriff*,
By W. H. RYUS, *D. S.*
F. W. DROUGHT.
S. BALMER.

88 *Attachment Return by Order of Attachment.*

STATE OF KANSAS, } ss:
County of Wyandotte, }

Received this order of attachment on the 16th day of May, A. D. 1874, at — o'clock — m., and thereupon, to wit, on the 16th day of May, 1874, at my county, I attached as the property of the within-named Joseph E. Snyder as described in the appraisement hereto attached and made part of this return by declaring on the premises that I attached said property at the suit of the within-named C. F. Welland, subject to attachment on the same day made in favor of Henry R. Seeger, issued from the 10th district court, Wyandotte county, Kansas, by taking the same into my possession and now hold the same subject to the order of the court, and with F. W. Drought and S. Balmer, two householders of my county, who were by me on the same day first duly sworn to make a true inventory and appraisement of all the property so attached, I made a true inventory and appraisement of all the property so attached, and which said inventory and appraisement is signed by the said householders and by myself and is returned with this order, and on the same day I left a true copy of this order.

Fees: Service, $1.00; appraisement fees, $2.00; summonsing appraisers, $1.00; mileage, $4.00 ---------- $5.40

E. S. W. DROUGHT, *Sheriff*,
Per W. H. RYUS, *Deputy Sheriff*.

As amended December 3, 1883; see page 132.

Endorsed: Appearance docket —, No. 1735. District court; Wyandotte county. Attachment. Issued May 16th, 1874. Returnable May 26th, A. D. 1874. C. F. Welland *vs.* Joseph E. Snyder. Brumback and Traber, plaintiff's attorneys. Filed May 25th, 1874. G. W. Betts, clerk.

In the Tenth District Court, in and for the County of Wyandotte and State of Kansas.

C. F. WELLAND, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant.

C. F. Welland, being duly sworn, deposes and says—

That the said defendant, Joseph E. Snyder has property in this the said county of Wyandotte and State of Kansas which is subject in this action to be taken and appropriated to the payment of the debts of the said defendant; that the said defendant is a non-resident of the State of Kansas, and that service of summons cannot be made upon him in this the said State of Kansas.

C. F. WELLAND.

Sworn to before me and subscribed in my presence this 25th day of June, A. D. 1874.

RICHARD ROBERTSON,

[SEAL.] *Notary Public in and for Jackson County, Missouri.*

Endorsed: C. F. Welland *vs.* Joseph E. Snyder. Affidavit. Filed June 25th, 1874. G. W. Betts, clerk.

Publication Notice.

To Joseph E. Snyder:

You will take notice that petition has been filed against you in the tenth judicial district court of the State of Kansas for Wyandotte county by C. F. Welland as plaintiff and against you as defendant, the said Joseph E. Snyder.

89 That you have been sued by him in said court, and that you answer the petition so filed by said plaintiff on or before the 15th day of August, A. D. 1874, or the same will be taken as true and judgment rendered against you, the nature of which will be for the recovery of two hundred and fifty ($250.00) dollars and interest thereon from the 8th day of February, 1859, at the rate of ten (10) per cent., being the amount due from said defendant to said plaintiff on four certain promissory notes made by said Snyder in favor of said plaintiff, all dated the 8th day of February, 1869, — will be rendered accordingly and an order made by said court that a special execution be issued for the sale of the following-described real estate lying and being in said county of Wyandotte and State of Kansas, viz:

Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-six hundred and four and one-half (3,604½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of sec. No. 11, t'w'p 11, range 25, in Wyandotte county, Kansas, and running from said first-mentioned point south sixty-one (61) degrees thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes — one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to beginning; also—

Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-five hundred and four and one-half (3,504½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet; thence north sixty-one degrees thirty (30) minutes east two hundred

and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning.

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred and four and one-half (3,404½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to the place of beginning.

Which has been levied upon and attached in this cause as the property of said Joseph E. Snyder, returnable according to law, to satisfy said debt and interest and the costs of this suit.

C. F. WELLAND,
By BRUMBACK AND TRABER,
Attorneys for Plaintiff.

90 *Affidavit of Publication.*

STATE OF KANSAS, } ss:
Wyandotte County, }

Richard B. Taylor, being first duly sworn, deposes and says that he is the editor and publisher of the "Wyandotte Gazette," a newspaper published and printed weekly in the city of Wyandotte, in said county, and of general circulation therein; that a notice, of which the annexed is a true and perfect copy, was published in said newspaper three consecutive weeks, the first publication thereof being on the 3rd day of July, A. D. 1874, and the last on the 17th day of July, A. D. 1874.

R. B. TAYLOR.

Subscribed in my presence and sworn to before me this 7th day of September, A. D. 1874.

[SEAL.] D. R. CHURCHILL,
Probate Judge.

Publication	$12 00
Affidavit	25
	$12 25

WYANDOTTE CITY, *January 23rd*, 1875.

Received of L. Traber the sum of $12.25 in full of printers' fee in the above-entitled case.

R. B. TAYLOR.

Endorsed: 1735. C. F. Welland *vs.* Jos. E. Snyder. Proof of publication. Filed Sept. 10th, 1874. G. W. Betts, clerk.

THE STATE OF KANSAS, }
Tenth Judicial District, Wyandotte County, } *ss:*

At a session of the district court, sitting within and for said county of Wyandotte, begun and held at the court-house, in the city of Wyandotte, in said county, on the 7th day of September, A. D. 1874, as by statute required—there being present Hon. Hiram Stevens, judge of said judicial district, and E. S. W. Drought, sheriff, and G. W. Betts, clerk of the district court of said county—the following proceedings are had:

THURSDAY, *September 10th, A. D.* 1874.

C. F. WELLAND
vs. } No. 1735.
JOS. E. SNYDER.

Now, at this day, comes the plaintiff aforesaid, by Brumback and Traber, his attorneys, and file- herein proof of service by publication duly and legally made on the defendant, which notified him of the pendency and object of this action and suit, which publication was made for three (3) consecutive weeks in the Wyandotte Gazette, a newspaper printed and published weekly in the city of Wyandotte, county of Wyandotte and State of Kansas, and of general circulation in said county.

Whereupon said service is approved by the court, and this cause coming on regularly for hearing, and the same being now heard by the court upon the petition and evidence and proof, and the court, being fully advised in the premises, finds that said defendant has been duly and legally notified of the pendency and object of this suit, and that all and singular the allegations in said petition of plaintiff are true, and that said defendant is justly and legally indebted to said plaintiff in the sum of three hundred and eighty-seven dollars ($387.00). It is therefore considered and adjudged by the court that the said plaintiff have and recover of said defendant the sum of three hundred and eighty-seven ($387.00) dollars and his costs herein, and that the said judgment herein bear interest at the rate of ten (10) per cent. per annum.

And it is further ordered and adjudged by the court that said plaintiff have hereof execution against the real estate herein attached, situated in the county and State aforesaid and described as follows:

91 Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-six hundred four and one-half (3,604½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section number eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said first-named point south sixty-one (61) degrees thirty (30)

minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to beginning.

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-five hundred four and one-half (3,504½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning.

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred four and one-half (3,404½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (10-) feet to the place of beginning.

Precipe.

District Court, Wyandotte County, Kansas.

NOV. 4TH, 1874.

C. F. WELLAND
vs.
JOS. E. SNYDER.

To the clerk of said court:

Issue execution to the sheriff (special) in the above-entitled cause, returnable according to law, directed to the sheriff of Wyandotte county, Kansas.

BRUMBACK AND TRABER,
Attorneys for Plaintiff.

Endorsed: District court, Wyandotte county, Kansas. Filed November 3rd, 1874. G. W. Betts, clerk, per J. W. Reed, D. C.

92 THE STATE OF KANSAS, } ss:
Tenth Judicial District, Wyandotte County, }

At a session of the district court, sitting within and for said county of Wyandotte, begun and held at the court-house, in the city of Wyandotte, in said county, on the tenth day of March, A. D. 1874, as by statute required—there being present Hon. Hiram Stevens, judge of said judicial district, and E. S. W. Drought, sheriff, and G. W. Betts, clerk district court of said county—the following proceedings are had:

THURSDAY, *September 10th, A. D.* 1874.

C. F. WELLAND, }
vs. } No. 1735.
JOSEPH E. SNYDER. }

Now, at this day, comes the plaintiff, by Brumback and Traber, his attorneys, and filed herein proof of service by publication duly and legally made on the defendant, which notified him of the pendency and object of this action and suit, which publication was made for three consecutive weeks in the Wyandotte Gazette, a newspaper printed and published weekly in the city of Wyandotte, county of Wyandotte and State of Kansas, and of general circulation in said county.

Whereupon such service is approved by the court, and this — coming on regularly for hearing and the same being now heard by the court upon the petition, evidence, and proof, and the court, being fully advised in the premises, finds that said defendant has been duly and legally notified of the pendency and object of this suit, and all and singular the allegations in said plaintiff's petition are true, and that said defendant is justly and legally indebted to said plaintiff — the sum of three hundred and eighty-seven ($387.00) dollars.

It is therefore considered and adjudged by the court that said plaintiff have and recover of said defendant the sum of three hundred and eighty-seven ($387.00) dollars and his costs herein, and that the judgment herein bear interest at the rate of ten (10) per cent. per annum.

And it is further ordered and adjudged by the court that said plaintiff have hereof execution against the real estate herein attached, situate in the county of Wyandotte and State of Kansas, described as follows:

Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-six hundred four and one-half (3,604½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said first-named point south sixty-one (61) degrees thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet;

thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to beginning.

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-five hundred four and one-half (3,504½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to
93 the place of beginning.

Also beginning six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred four and one-half (3,404½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning.

STATE OF KANSAS, } ss:
Wyandotte County, }

I, G. W. Betts, clerk of the district court in and for said county, do hereby certify that the within and foregoing is a full, true, and correct copy of certain proceedings had in said court in the case therein entitled as the same appears of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Wyandotte, this 24th day of November, A. D. 1874.

[SEAL.] G. W. BETTS, *Clerk.*

STATE OF KANSAS, } ss:
Tenth Judicial District, Wyandotte County, }

To the sheriff of the county of Wyandotte, in State of Kansas, Greeting:

You are hereby commanded that of the said described lands and tenements you cause to be made the debt and costs herein, together with costs of increase, this day taxed at five dollars and ninety-five cents ($5.95), and the accruing costs herein, and that you have the

same before the court aforesaid in sixty (60) days from the date, in the city of Wyandotte and county aforesaid, and that you then and there certify how you shall have executed this writ.

Witness my hand and the seal of said court, affixed at my office, in the city of Wyandotte, this the 24th day of November, A. D. 1874.

[SEAL.] G. W. BETTS, *Clerk.*

Appraisement.

In the District Court of the State of Kansas in and for the County of Wyandotte.

C. F. WELLAND *vs.* JOSEPH E. SNYDER. } No. 1735.

We, the undersigned householders of the said county of Wyandotte, having been duly summonsed and sworn by E. S. W. Drought, sheriff of said county, to make an impartial appraisement upon actual view of certain lands and tenements situated therein, do estimate the real value of said property as follows, to wit:

All that certain tract of land described as beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point 3,604½ feet north 28 degrees 30 minutes west — the southeast corner of section number eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said first-named point south sixty-one (61) degrees thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to beginning, at the sum of five hundred dollars ($500.00).

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Also beginning at a point six hundred forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-five hundred four and one-half (3,504½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of five hundred dollars ($500).

Also beginning six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred four and one-half (3,404½) feet north

thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to beginning.

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-five hundred four and one-half (3,504½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to
93 the place of beginning.

Also beginning six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred four and one-half (3,404½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning.

STATE OF KANSAS, } ss:
Wyandotte County, }

I, G. W. Betts, clerk of the district court in and for said county, do hereby certify that the within and foregoing is a full, true, and correct copy of certain proceedings had in said court in the case therein entitled as the same appears of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Wyandotte, this 24th day of November, A. D. 1874.

[SEAL.] G. W. BETTS, *Clerk.*

STATE OF KANSAS, } ss:
Tenth Judicial District, Wyandotte County, }

To the sheriff of the county of Wyandotte, in State of Kansas, Greeting:

You are hereby commanded that of the said described lands and tenements you cause to be made the debt and costs herein, together with costs of increase, this day taxed at five dollars and ninety-five cents ($5.95), and the accruing costs herein, and that you have the

same before the court aforesaid in sixty (60) days from the date, in the city of Wyandotte and county aforesaid, and that you then and there certify how you shall have executed this writ.

Witness my hand and the seal of said court, affixed at my office, in the city of Wyandotte, this the 24th day of November, A. D. 1874.

[SEAL.] G. W. BETTS, *Clerk.*

Appraisement.

In the District Court of the State of Kansas in and for the County of Wyandotte.

C. F. WELLAND *vs.* JOSEPH E. SNYDER. } No. 1735.

We, the undersigned householders of the said county of Wyandotte, having been duly summonsed and sworn by E. S. W. Drought, sheriff of said county, to make an impartial appraisement upon actual view of certain lands and tenements situated therein, do estimate the real value of said property as follows, to wit:

All that certain tract of land described as beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point 3,604½ feet north 28 degrees 30 minutes west — the southeast corner of section number eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said first-named point south sixty-one (61) degrees thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to beginning, at the sum of five hundred dollars ($500.00).

94

Also beginning at a point six hundred forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-five hundred four and one-half (3,504½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of five hundred dollars ($500).

Also beginning six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred four and one-half (3,404½) feet north

twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of five hundred dollars ($500.00).

Dated at Wyandotte, December 1st, A. D. 1874.

Appraisers: R. E. CABLE.
ROBERT TALTON.
THOMAS APPLEBY SHAW.

Return of Special Execution.

STATE OF KANSAS, *Wyandotte County,* } ss:

Received this special execution on the 24th day of November, A. D. 1874, and, according to commands therein contained, I did on the 1st day of December, A. D. 1874, call an inquest of three disinterested householders of my county, residents therein, viz., R. E. Cable, Robert Talton, and Thomas Appleby Shaw, and administered to them an oath to impartially *to* appraise the property in said special execution mentioned upon actual view, and thereupon, to wit, on the 1st day of December, A. D. 1874, said householders returned to me under their hands an estimate of the real value of said property and which is hereto attached and made a part hereof.

And I did on the 3rd day of December, A. D. 1874, deposit with the clerk of the district court of said county a copy of such return, and thereupon, to wit, on the 18th day of December, 1874, I caused a public notice to be given that I would sell said property at public auction at the court-house in my county on the 20th day of January, 1875, between the hours of ten (10) a. m. and four (4) p. m., by advertisement in the Wyandotte Gazette, a newspaper printed in my county, proof of which advertisement is annexed to execution returned in the case of Henry R. Seegar *vs.* Joseph E. Snyder and numbered 1734, and the said described property was sold under said last-named execution.

E. S. W. DROUGHT, *Sheriff.*

Fees: Appraisement, $1.00; summonsing appraisers, $1.00; advertising, $1.00; offering for sale, $1.00; expense appraisers' fees, $1.50	$5 50
Debt, with interest	$387 00
Costs	25 25
Increased costs	5 95
	$418 20

Endorsed: Special execution. S No. 1735. District court, Wyandotte county, Kansas. C. F. Welland *vs.* Joseph E. Snyder. Filed March 5th, 1875. G. W. Betts, clerk.

95 STATE OF KANSAS, } *ss.:*
County of Wyandotte, }

Received this special execution on the 24th day of November, A. D. 1874, and, according to the commands therein contained, did, on the first day of December, A. D. 1874, call an inquest of three (3) disinterested householders of my county, residents therein, viz., R. E. Cable, Robert Talton, and Thomas Appleby Shaw, and administered to them an oath impartially to appraise the property in the special execution mentioned upon actual view; and thereupon, to wit, on the 1st day of December, A. D. 1874, said householders returned to me, under their hands, an estimate of the real value of said property and which is hereto attached and made a part hereof; and I did on the 3rd day of December, A. D. 1874, deposit with the clerk of the district court of my county a copy of such return; and thereupon, to wit, on the 18th day of December, 1874, I caused public notice to be given that, "by virtue of two (2) special executions issued by the clerk of the district court of the county of Wyandotte and State of Kansas in favor of Henry R. Seeger and C. F. Welland and against Joseph E. Snyder," the last-named execution being the execution hereto attached, I would sell said property at public auction, at the court-house in my county, on the 20th day of January, A. D. 1875, between the hours of ten (10) a. m. and four (4) p. m., which public notice was given for at least thirty (30) days before the day of sale by advertisements in the Wyandotte Gazette, a newspaper printed in my county and of general circulation therein, proof of which advertisement is hereto annexed and made a part of my return of the said special execution in favor of Henry R. Seeger and against Joseph E. Snyder; and, at the time and place stated and named in said notice, I offered said property for sale under both said executions at public auction, and so under both said special executions sold the said property and real estate to the highest bidder and best bidder therefor in the following parcels for the following sums, the same being more than two-thirds (⅔) of the said appraised value, viz:

The parcel of land in the special execution hereto attached first described was then and there duly struck off and sold to Lafayette Traber for the sum of three hundred and thirty-four dollars ($334.00).

And the parcel of land in the special execution hereto attached second- described was then and there duly struck off and sold to Lafayette Traber for the sum of three hundred and thirty-four (334) dollars.

And the parcel of land in the special execution hereto attached third- and lastly described was also then and there duly struck off and sold to said Lafayette Traber for the sum of three hundred and thirty-four dollars ($334.00).

E. S. W. DROUGHT, *Ex-Sheriff.*

Copy of Appraisement.

In the District Court of the State of Kansas in and for Wyandotte County.

C. F. WELLAND
vs.
JOSEPH E. SNYDER. } No. 1735.

We, the undersigned, householders of the said county of Wyandotte, having been duly summonsed and sworn by E. S. W. Drought, sheriff of said county, to make an impartial appraisement upon actual view of certain lands and tenements situated therein, do estimate the real value of said property as follows:

All that certain tract of lands described as beginning as a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-six hundred four and one-half (3,604½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southwest corner of section number eleven (11), township eleven (11), range twenty-five (25),
96 Wyandotte county, Kansas, and running from said first-mentioned point south sixty-one (61) degrees thirty (30) minutes west, along the northwest line of the land formerly belonging to David E. James, two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to beginning, at the sum of five hundred dollars ($500.00).

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-five hundred four and one-half (3,504½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, State of Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of five hundred dollars ($500.00).

Also beginning — six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred four and one-half (3,404½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred

and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of five hundred dollars ($500).

Dated at Wyandotte, December 1st, A. D. 1874.

R. E. CABLE,
ROBERT TALTON.
THOMAS APPLEBY SHAW, *Appraisers.*

Endorsed: No. 1735. C. F. Welland *vs.* Joseph E. Snyder. Copy of appraisement. Filed December 3rd, 1874. G. W. Betts, clerk.

THE STATE OF KANSAS, } *ss:*
Wyandotte County, Tenth Judicial District, }

At a session of the district court, sitting within and for said county of Wyandotte, begun and held at the court-house, in the city of Wyandotte, in said county, on the 5th day of April, 1875, as by statute required—there being present Hon. Hiram Stevens, judge of said judicial district, and E. S. W. Drought, sheriff, and G. W. Betts, clerk of the district court of said county—the following proceedings are had:

FRIDAY, *April 9th, A. D.* 1875.

C. F. WELLAND
vs.
J. E. SNYDER. } No. 1735.

Now, at this day, comes the said plaintiff, by his attorneys, Brumback and Traber, and moves the court to confirm the sale of real estate heretofore made by the sheriff of Wyandotte county
97 under a special execution in this cause issued, and, the court having carefully examined the proceedings of said sheriff under said special executions and being fully satisfied that the sale has been in all respects made in conformity to law, said motion is by the court sustained.

And it is ordered that said sheriff make to the purchaser at such sale a deed to the real estate as required by law.

In the Tenth Judicial District within and for the State of Kansas and Wyandotte County.

C. F. WELLAND
vs.
JOSEPH E. SNYDER. } No. 1735.

Motion to Have Leave Granted to Ex-Sheriff E. S. W. Drought, Former Sheriff of Wyandotte County, to Amend Return of Execution in Above Case.

Now, at this day, comes the plaintiff, by his attorneys, and respectfully shows to the court that the return heretofore made on the ex-

ecution issued in this case on November 24th, 1874, is incorrect and defective in this—

That said return does not show that there was any sale made under and by virtue of said execution of the property therein described, while the truth is that the property described in said execution was sold under and by virtue of said execution and one other special execution in the case number 1734 in this court of Henry R. Seeger *vs.* Joseph E. Snyder, and that said return in the case of C. F. Welland *vs.* Joseph E. Snyder should show that said land was sold under and by virtue of both said executions.

Your petitioner therefore prays that said ex-sheriff shall be allowed to so amend said return to the end that when so amended the same shall correspond with the real facts in the case.

C. F. WELLAND,
By his attorney, —— ——.

Also comes now the ex-sheriff, E. S. W. Drought, and asks leave of the court to amend the return of the special execution in the case in this court, number 1735, of C. F. Welland *vs.* Joseph E. Snyder to correspond with the real facts; that the return heretofore made does not conform to the facts in this, that it does not appear that any sale was made of the land therein mentioned in said execution, while the truth is that said property was sold under said execution and one other execution in case number 1734, of Henry R. Seeger *vs.* Jos. E. Snyder, and should so have been returned, but by mistake and inadvertence was not.

E. S. W. DROUGHT.

Endorsed: 1735. C. F. Welland *vs.* Jos. E. Snyder. Motion for leave to former sheriff to amend return to execution. Filed December 30th, 1878. G. W. Betts, clerk.

C. F. WELLAND
vs.
JOSEPH E. SNYDER. } Motion.

Now, at this time, comes L. Traber and shows to the court that heretofore, to wit, on the 10th day of September, 1874, the above-named plaintiff recovered a judgement against the above-named defendant in this court, and on the 24th day of November, 1874, said plaintiff caused a special execution to be issued thereon from this court for the sale of the property in said execution described; that to satisfy said execution that said property was by one E. S. W. Drought, the then sheriff of Wyandotte county, Kansas, having in his hands said execution, offered for sale and sold to satisfy said execution at public auction or public sale in pursuance of
98 a duly and legally published notice of sale on the 20th day of January, 1875, to L. Traber, under said execution and under one other special execution in the case of Henry R. Seeger *vs.* said Joseph E. Snyder in this court for the sum of one thousand and two dollars ($1,002.00), being more than two-thirds (⅔) of the

appraised value of said land, which sum was duly paid to said sheriff.

That afterwards, on the 9th day of April, 1875, both said sales so made under said two (2) executions were duly confirmed by this court.

That a deed was made to said Traber under his purchase in the case of Henry E. Seeger *vs.* Joseph E. Snyder by said sheriff, E. S. W. Drought, on the 19th day of April, 1875, but that no deed was ever made to said Traber by said sheriff in the case of C. F. Welland *vs.* Joseph E. Snyder during his term of office which has expired, nor by his successor.

The said Traber therefore prays that a certificate to the present sheriff of said county may be granted from the court, signed by the clerk of this court, by order of this court, setting forth that sufficient proof has been made to the court that said sale under said two executions was fairly and legally made, and the said present sheriff directed to make to said L. Traber a deed for all said property so sold by virtue of said two executions by said former sheriff, E. S. W. Drought.

L. TRABER.

Endorsed: 1735. C. F. Welland *vs.* Joseph E. Snyder. Motion for order to sheriff to make deed. Filed December 30th, 1878. G. W. Betts, clerk.

THE STATE OF KANSAS, } ss:
Tenth Judicial District, Wyandotte County, }

At a session of the district court, sitting within and for the county of Wyandotte, begun and held at the court-house, in the city of Wyandotte in said county, on the 2nd day of December, 1878, as by statute required—there being present Hon. Hiram Stevens, judge of said judicial district; W. H. Ryus, sheriff, and G. W. Betts, clerk of the district court of said county—*and* the following proceedings are had:

MONDAY, *December 30th, A. D.* 1878.

C. F. WELLAND
vs. } No. —.
JOSEPH E. SNYDER.

Now, on this day, comes Lafayette Traber and E. S. W. Drought, former sheriff of said county of Wyandotte county, Kansas, and file their motion in this cause for leave to S. E. W. Drought, former sheriff, to amend his return as sheriff of Wyandotte county to the execution issued in the above cause and dated the 24th day of November, 1874, from this court; — coming on regularly for hearing and the court, being fully advised in the premises, doth find that E. S. W. Drought, one of the parties asking the amendment of said return, was the sheriff of said Wyandotte county when said execution was by him returned *by him* into the court on the 5th day of March, 1875.

That said return so made by said sheriff does not conform to the facts in this:

That by said return it would not and does not appear that the land described in said execution had not been sold under said execution by said sheriff, when the truth, as it is made to appear now to this court, *and* is that the land described in said execution described was in fact sold to one L. Traber under said execution, as well as under another special execution from this court, bearing same date, in the case of Henry Seeger *vs.* said Joseph E.
99 Snyder; which sale was by this court duly confirmed on the 9th day of April, 1875.

It is therefore ordered by the court that said former sheriff, E. S. W. Drought, now make his return of said first-named execution to this court, in accordance with the findings of the court herein and according to the real facts in the case.

And thereupon said E. S. W. Drought, late sheriff, who made said sale while in office, appears and makes on said execution his amended return thereto, showing a sale of said lands aforesaid under both said executions.

And at the same time and place also appears in open court Lafayette Traber and files his other motion that the present sheriff of this county be ordered to execute and deliver to him, said Traber, a deed under and by virtue of said sale, which motion is by the court sustained, and sufficient proof is now made to this court that such sale was fairly and legally made by said E. S. W. Drought as sheriff of said county of Wyandotte to said Lafayette Traber for the sum of one thousand dollars ($1,000) of the land described in said execution, which sale was made under and by virtue of said two (2) executions, and proof is also made to said court that the purchase-money for the lands has been fully paid by said Traber, and the court, having carefully examined the proceedings of said E. S. W. Drought under said execution, is satisfied that said sale has in all respects been made in conformity to the provisions of article twenty, chapter eighty, of the General Statutes of the State of Kansas, and approves said sale, and the court now here directs the clerk to make an entry on the journal of this court that the court is satisfied with the legality of said sale and orders that William H. Ryus, present sheriff of Wyandotte county, Kansas, make to said Lafayette Traber a deed for said lands and tenements, the term of service of said Drought as sheriff, the officer who made the sale, having heretofore expired since the making of said sale.

C. F. WELLAND, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant. } No. 1735.

Now, at this day, comes the plaintiff in the above-entitled cause and moves the court for an order allowing the sheriff of said county who served the process in this case to amend and perfect, according to the facts and truth of the matter, the returns on the writ of attachment, dated May 16th, 1874, issued herein.

L. TRABER,
Attorney for Plaintiff.

Endorsed: 1735. C. F. Welland *vs.* Joseph E. Snyder. Motion (order) for leave to sheriff to amend attachment return. Filed December 4th, 1882. G. W. Betts, clerk. L. Traber, attorney for plaintiff.

In the District Court of Wyandotte County, Kansas, for the Tenth Judicial District of Kansas.

C. F. WELLAND, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant. } No. 1735.

Said defendant having died intestate, said plaintiff hereby notified the widow and children of said defendant, they being sole heirs of said defendant, that on the first day of the next term of said court (which begins on December 4th, 1882) at ten (10) o'clock a. m., or as soon thereafter as counsel can be heard, said plaintiff will apply to said court for an order allowing the sheriff of said county,
100 who served the process, to amend and perfect, according to the facts and truth of the matter, the return of the writ of attachment, dated May 16th, 1874.

L. TRABER,
Attorney for Plaintiff.

STATE OF MISSOURI,
County of Jackson, } *ss:*

William K. Hawkins, being first duly sworn, deposes and says: That he made service of the annexed and foregoing notice on Mrs. Teresa Snyder, widow of Joseph E. Snyder, deceased, and also on her sons, James D. Snyder and Eugene Snyder, on November 29th, 1882, and on her sons, Fred. and Carter Snyder, on the 1st day of December, 1882, by delivering to and leaving with each of them a true and correct copy of said notice at Kansas City, Missouri.

WILLIAM K. HAWKINS.

Subscribed and sworn to before me this 2nd day of December, 1882.

[SEAL.]

J. N. EMMETT,
N. EMMETT,
Notary Public.

Endorsed: 1735. C. F. Welland *vs.* Joseph E. Snyder. Notice for leave of sheriff to amend return of attachment. Filed December 4th, 1882. G. W. Betts, clerk. L. Traber, attorney for plaintiff.

In the District Court of Wyandotte County, Kansas.

C. F. WELLAND, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant.

STATE OF KANSAS,
Wyandotte County, } ss:

William H. Ryus, being first duly sworn, deposes and says:

That in the year 1874 E. S. W. Drought was the sheriff of said county of Wyandotte and that this deponent was the deputy; that on the 16th day of May, 1874, the writ of attachment on file in the above-entitled cause was received by said sheriff and delivered to this deponent for execution.

That on said day and at Wyandotte county he executed said writ by attaching as the property of the said Joseph E. Snyder the lands particularly described in the appraisement on file in this action, and that by declaring on said premises; that he attached said property at the suit of the said C. F. Welland, subject to attachment on the same day made in favor of Henry R. Seegar, issued from said court.

That — with F. W. Drought and S. Bolmar, two householders of said county and who were by this deponent on the same day first duly sworn to make a true inventory and appraisement of all the property so attached, which inventory and appraisement was signed by the said householders and by his deponent and is on file in said action; that on the same day this deponent left a copy of said order of attachment in a conspicuous place upon said premises so attached, there being no occupant thereof.

Deponent further says that he wrote out the attachment return on file and filed the same, but by mistake neglected to state therein the fact that he left a copy of the order of attachment in a conspicuous place upon the attached premises and also neglected to sign the return.

W. H. RYUS.

Subscribed and sworn to before me this 5th day of December, 1882.

SARAH E. CLARK,
[SEAL.] *Notary Public.*

Commission expires May 21st, 1884.

Endorsed: No. 1735. District court of Wyandotte county, State of Kansas. C. F. Welland, plaintiff, *vs.* Joseph E. Snyder, defendant. Affidavit of W. H. Ryus. Filed December 5th, 1882. G. W. Betts, clerk.

101 THE STATE OF KANSAS,
Tenth Judicial District, Wyandotte County, } ss:

At a session of the district court, sitting within and for said county of Wyandotte and State of Kansas, begun and held at the court-

house, in the city of Wyandotte, in said county, on the 3rd day of December, 1883, as by statute required—there being present Hon. W. R. Wagstaff, judge of said judicial district, and Thomas B. Bowling, sheriff, and L. C. Trickey, clerk of the district court of said county—the following proceedings are had:

WEDNESDAY, *January 2nd, A. D.* 1884.

C. F. WELLAND
vs.
JOSEPH E. SNYDER. } No. 1735.

This day the within motion of the plaintiff, by L. Traber, his attorney, filed December 4th, 1882, and the verbal motion of the late sheriff, E. S. W. Drought, and W. H. Ryus, his deputy, named in open court the same day at the time the plaintiff appeared, and the widow of Joseph E. Snyder also appeared by John B. Scroggs, her attorney, and the application of L. Traber, the purchaser of the lands at the sheriff's sale made herein contained in the affidavit of said Traber, filed December 22nd, 1882, for leave for the said sheriff to amend the return on the order of *the* attachment herein according to the facts and the truth of the matter, which order of attachment *herein according to the facts and matter and truth of the matter, which order of attachment* is dated May 16th, 1874, and filed, as shown by endorsement thereon, by the clerk May 25th, 1874, coming *in* for hearing at the regular fall term, 1883, of this court upon the papers and record in this cause, *and* the proofs were argued by C. W. Blair and J. Brumbach for said plaintiff, Welland, said Drought, said Ryus, and said Traber and by Nathan Cree and James M. Mason for James M. Mason and Nicholas McAlpine, intervened herein, and by Byrom Sherry and Goodin and Kepplinger for Teresa Snyder, and the court, being fully advised in the premises, finds that Joseph E. Snyder died intestate in A. D. 1878, leaving as his sole heirs his widow, Teresa Snyder, and his four (4) children, James D. Snyder, Eugene Snyder, Fred. Snyder, and Casper Snyder, one of whom is a minor; that written notice of the intentions of plaintiff to file his said motion was served on said Teresa Snyder, James D. Snyder, and Eugene Snyder on November 29th, 1882, and on said Fred. Snyder and Caspar Snyder on December 1st, 1882, by delivery to each of them of a copy of such notice, which service was made by delivery of such copy at their residence, in Jackson county, State of Missouri, and that there was failure of said sheriff, Drought, and of his said deputy to sign the returns attached to and now *and* on said order of attachment.

It is now, therefore, ordered that said E. S. W. Drought, sheriff in A. D. 1884, who, by W. H. Ryus, his deputy, *who* executed the order of attachment herein, so far as the same was executed, has leave to amend said returns now attached to and put on said order of attachment by signing the same, such signing to be by said Drought signing his own name as sheriff or by said Ryus signing E. S. W. Drought, sheriff, by W. H. Ryus, deputy sheriff, or by both, but no other amendment to or alteration of such return shall be made.

And the court overrules said motion in all other respects because the court finds that the facts do not justify any further amendment and that the preponderance of the evidence is against any such further proposed amendment.

Said plaintiff, Welland, said Drought, said Ryus, said Traber each severally except to the refusal of the court to grant leave to amend said return further and so as to show that there was no occupant of the land attached, and also that the sheriff posted a copy of the order of attachment in a conspicuous place on the land.

102 And the said McAlpine and Mason, intervened, as well as said Teresa Snyder, each severally excepted to the sustaining of said motion so far as relates to permitting the signature of the officer to be attached to said return.

SATURDAY, *January* 5rd, *A. D.* 1884.

C. F. WELLAND
vs.
JOSEPH E. SNYDER. } No. 1735.

At this day C. F. Welland, E. S. W. Drought, W. H. Ryus, and L. Traber are by the court allowed until February 13th, 1884, to make and serve a case made for the supreme court, and defendant and interpleaders, James M. Mason and N. McAlpine, are allowed fifteen (15) days thereafter to suggest amendments thereto and three (3) days thereafter to present, sign, and settle case made.

C. F. WELLAND
vs.
JOSEPH E. SNYDER. } 1735.

At this day the defendant in the above case and the interpleaders in said case, J. M. Mason and M. McAlpine, are allowed sixty (60) days to make and serve a case made for the supreme court, and plaintiff in said case is allowed fifteen (15) days thereafter to suggest amendments thereto and three (3) days thereafter to present, sign, and settle case made.

STATE OF KANSAS,
County of Wyandotte, } *ss:*

I, L. C. Trickey, clerk of the district court in and for said county and State, hereby certify the above and foregoing to be a full, true, and complete copy of the pleadings and journal record of the case therein entitled as fully as the same appears on file and of record in my office, and that the same is a complete record of said case excepting certain affidavits, depositions, &c., in relation to motion to amend sheriff's return to order of attachment filed after date of filing of said motion.

Witness my hand and the seal of said court affixed hereto, at my office, in the city of Wyandotte, this 9th day of May, 1885.

[SEAL.] L. C. TRICKEY,
Clerk District Court.

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, W. R. Wagstaff, judge of the tenth judicial district of said State and present judge of the district co*u*ty of said county, do hereby certify that L. C. Trickey, by whom the foregoing attestation was made, was at the date thereof clerk of said court, duly qualified, and that the same is in due form of law and made by the proper officer.

Dated May 9th, A. D. 1885.

W. R. WAGSTAFF.

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, L. C. Trickey, clerk of the district court in and for said county, do hereby certify that Hon. W. R. Wagstaff, whose genuine signature is subscribed to the foregoing certificate, was at the date thereof president judge of said court, duly commissioned and sworn and acting.

In witness whereof I have hereunto set my hand, affixed the seal of said court, at the city of Wyandotte, this the 9th day of May, A. D. 1885.

[SEAL.] L. C. TRICKEY, *Clerk.*

Costs of transcript, $9.75; received of Tourtelotte and Alcott, by J. Brumback, $9.75.

L. C. TRICKEY, *Clerk.*

103 And the certified transcript in the attachment proceedings of Henry R. Seegar *vs.* Joseph E. Snyder is in words and figures following, to wit:

In the Wyandotte County District Court and in the 10th Judicial District of the State of Kansas.

HENRY R. SEEGAR, Plaintiff, }
vs.
JOSEPH E. SNYDER, Defendant. }

Petition.

Plaintiff, for cause of action against said defendant, says:

First. That on the twenty-seventh (27th) day of April, 1866, at the county of Jackson and State of Missouri, he became security for said defendant in the sum of four hundred dollars ($400) on a bond of writing obligatory made by the plaintiff jointly with said defendant and in favor of one Charles G. Hopkins, and of which the following is a true copy:

We, Joseph E. Snyder, as principal, and Henry R. Seegar, as security, acknowledge ourselves indebted to Charles G. Hopkins in the sum of four hundred dollars ($400), upon the condition:

Whereas the said Joseph E. Snyder has prayed a writ of certiorari

directed to Elisha B. Cravens, a justice of the peace for Jackson county, requiring the said justice to certify to the Kansas City court of common pleas the record, proceedings, and papers in a certain case of unlawful detainer pending before said justice, wherein Charles G. Hopkins is plaintiff and Joseph E. Snyder is defendant:

Now, if the said Joseph E. Snyder shall — commit nor suffer any waste or damage to be committed on the premises sued for and shall pay all rents and profits, damages, and costs that may be adjudged against him, and otherwise abide the judgement of the said Kansas City court of common pleas, then this cognizance shall be void.

Witness our hands and seals this 27th day of April, 1866.

JOSEPH E. SNYDER,
HENRY E. SEEGER.

Approved April 27th, 1866.

CHARLES H. VINCENT, *Clerk.*

That on the 4th day of February, 1869, a suit was commenced on said bond or writing obligatory by the said Charles G. Hopkins in the Jackson county, Missouri, circuit court against this plaintiff and said Joseph E. Snyder to recover the said sum of four hundred ($400) dollars, the amount mentioned therein, by reason of the terms thereof having been broken by said Snyder, and the said bond thereby became forfeited.

That afterwards, on the 14th day of the September term of said circuit court, it being the 26th day of said month, in the said case of Charles G. Hopkins against said Joseph E. Snyder and Henry R. Seegar on said bond, the said Charles G. Hopkins, as plaintiff, recovered by a judgement of said court duly rendered and given a judgement thereon against the plaintiff, Henry R. Seegar (in that case defendant), for the said sum of four hundred dollars ($400.00), the full amount of said bond or writing obligatory, together with the amount of the costs, amounting to twenty-two dollars and fifty cents ($22.50).

That plaintiff has been compelled to pay said judgement of four hundred dollars ($400.00) and interest and costs of said suit, and did pay the same as follows, viz: On the 18th day of October, 1873, the principal sum of four hundred dollars ($400.00) and interest thereon to date, fifty-nine dollars ($59.00), and costs to the amount of seventeen dollars and ninety-five cents ($17.95), and on
104 February 25th, 1874, additional costs of four dollars and fifty-five cents ($4.55), making in all the sum of four hundred and eighty-one dollars and fifty cents ($481.50) so paid by plaintiff as security for and on behalf of said Joseph E. Snyder by reason of the premises above stated, as by the judgement of said circuit court he was bound to do.

Wherefore, by reason of the premises, the said plaintiff says that said defendant, Joseph E. Snyder, is indebted to him in the sum of four hundred and eighty-one dollars and fifty cents ($481.50), the amount so paid by him for said defendant, together with interest thereon from the 18th day of October, 1873, at six (6) per cent. per annum, for which amount the plaintiff asks judgment against said

defendant, Joseph E. Snyder, and for all other proper relief to which he is entitled.

GAGE AND LADD AND
BRUMBACK AND TRABER,
Attorneys for Plaintiff.

STATE OF KANSAS,
County of Wyandotte.

——— ———, being duly sworn according to law, deposes and says that he is one of the attorneys for plaintiff in above-entitled case of Henry R. Seegar *vs.* Joseph E. Snyder, defendant. The nature of the plaintiff's claim against the defendant is for the amount of money he was compelled to pay for and on account of a judgement rendered against the plaintiff on a bond or writing obligatory, wherein said defendant was principal and the said plaintiff was security, and which said plaintiff did pay for the benefit of said defendant; that the sum so paid and for which defendant is indebted to him amounts in the aggregate to the sum of four hundred eighty-one dollars and fifty cents ($431.50), including interest and costs, together with interest on four hundred and seventy-six dollars and ninety-five cents (476.95) thereof from the 18th day of October, 1873, and on four dollars and fifty-five cents ($4.55) from the 25th day of February, 1874.

That the defendant is a non-resident of the State of Kansas.

L. TRABER,
Attorney for Plaintiff.

Sworn to before me and subscribed in my presence the 16th day of May, 1874.

[SEAL.]

G. W. BETTS, *Clerk*,
Per J. W. REED, *D. C.*

In Wyandotte County District Court, Kansas.

I agree and bind myself to pay all costs that may be adjudged against the plaintiff in the above-entitled cause of C. F. Welland *vs.* Joseph E. Snyder.

O. SAUER, *H.*

Approved May 16th, 1874.

G. W. BETTS, *Clerk*,
Per J. W. REED, *D. C.*

Endorsed: No. 1734. Henry R. Seegar *vs.* Joseph E. Snyder. Petition. Filed May 16th, A. D. 1874. G. W. Betts, clerk, per J. W. Reed, D. C. Gage and Ladd and Brumback and Traber, attorneys for plaintiff.

Precipe.

District Court, Wyandotte County, Kansas.

HENRY R. SEEGAR
vs.
JOSEPH E. SNYDER.

To the clerk of said court:

Issue summons and writ of attachment in above-entitled cause, returnable according to law, directed to the sheriff of Wyandotte county, Kansas.

GAGE AND LADD AND
BRUMBACK AND TRABER,
Attorneys for Plaintiff.

105 May 16th, 1874.
District court, Wyandotte county, Kansas.

Endorsed: No. 1734. Henry R. Seegar *vs.* Joseph E. Snyder. Filed May 16th, 1874. G. W. Betts, clerk, per J. W. Reed, D. C.

UNITED STATES OF AMERICA,
State of Kansas, Tenth Judicial District, Wyandotte County, } ss:

The State of Kansas to the sheriff of the county of Wyandotte, in said State, Greeting:

You are hereby commanded to notify Joseph E. Snyder, defendant, that he has been sued by Henry R. Seegar, plaintiff, in the district court of Wyandotte county, and that unless he answer by the 15th day of June, A. D. 1874, the petition of said plaintiff against him filed in clerk's office of the court aforesaid the same will be taken as true and judgement rendered accordingly. You will make due return to this summons on the 26th day of May, A. D. 1874.

Witness my hand and the seal of said court, affixed at my office, in the city of Wyandotte, this 16th day of May, A. D. 1874.

[SEAL.] G. W. BETTS, *Clerk*,
Per J. W. REED, *D. C.*

Endorsed: Suit brought for recovery of money. Amount claimed, four hundred and eighteen dollars and fifty cents ($418.50), with interest from the 18th day of October, A. D. 1873, at the rate of six (6) per cent. per annum. G. W. Betts, clerk, per J. W. Reed, dep. C.

STATE OF KANSAS,
County of Wyandotte, } ss:

Received this summons on the 10th day of May, A. D. 1874, and served the same in my county by the within-named Joseph E. Snyder not found in my county this the 26th day of May, 1874.

E. S. W. DROUGHT,
By W. H. RYUS,
Deputy Sheriff.

Fees: Service, $15; mileage, .20.

[Endorsed:] Appearance docket "D," No. 1734. District court, Wyandotte county. Summons. Issued May 16th, 1874. Returnable May 26th, 1874. Henry R. Seegar *vs.* Joseph E. Snyder. Brumback and Traber, plaintiff's attorneys. Filed May 23rd, A. D. 1874. G. W. Betts, clerk.

Order of Attachment, with Appraisement and Return.

Attachment.

In the District Court of the County of Wyandotte for the State of Kansas.

HENRY R. SEEGAR, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant.

The State of Kansas to the sheriff of the county of Wyandotte, in said State, Greeting:

You are hereby commanded to attach and safely keep the lands, tenements, goods, chattels, stocks, rights, credits, moneys, and effects of the defendant, Joseph E. Snyder, in your county not execmpt by law from being applied to the payment of the claim of the plaintiff, or so much thereof as will satisfy his claim, for four hundred and eighty-one and fifty-hundredths ($481.50) dollars, with interest at the rate of six (6) per cent. per annum from the 18th day of October, A. D. 1873, and fifty dollars ($50.00), the probable costs of this action, and of your proceedings hereunder make due return within ten (10) days from the date hereof.

106 Witness my hand and the seal of said court, affixed at my office, in the city of Wyandotte, this the 16th day of May, A. D. 1874.

[SEAL.]

G. W. BETTS, *Clerk*,
Per J. W. REED, *D. C.*

Appraisement in Attachment Attached to Sheriff's *Return of Sheriff on Order of Attachment.*

In the District Court of the State of Kansas in and for the County of Wyandotte.

HENRY R. SEEGAR
vs.
JOSEPH E. SNYDER.

We, the undersigned, W. H. Ryus, under sheriff of the said county of Wyandotte, with F. W Drought and S. Balmer, householders of said county, do hereby make a true inventory and appraisement of all the property attached by the said sheriff by virtue of the order of attachment in said cause issued and now in his hands for execution as follows, to wit:

Lands and Tenements in said County.

Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-six hundred and four and one-half (3,604½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and running from said first-named point south sixty-one (61) degrees and thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the beginning, at the sum of four hundred and thirty-three dollars and thirty-three and one-third cents ($433.33⅓).

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-five hundred four and one-half (3,504½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section number eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to place of beginning, at the sum of four hundred and thirty-three dollars and thirty-three and one-third cents ($433.33⅓).

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred four and one-half (3,404½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section number eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to place of beginning, at the sum of four hundred and thirty-three dollars and thirty-three and one-third cents ($433.33⅓)..

107 16th day of May, 1874.

E. S. W. DROUGHT, *Sheriff*,
By W. H. RYUS, *Deputy Sheriff*.

F. W. DROUGHT.
S. BALMER.

Attachment Return on Order of Attachment.

STATE OF KANSAS, } ss:
Wyandotte County, }

Received this order of attachment on the 16th day of May, A. D. 1874, at 10 o'clock — m., and thereupon, to wit, on the 16th day of May, 1874, at my county, I attached as the property of the within-named Joseph E. Snyder as described in the appraisement hereunto attached and made a part of this return by declaring on the premises that I attached said property at the suit of the within-named Henry R. Seeger and by taking the same into my possession, and now hold the same subject to the order of the district court, and with F. W. Drought and S. Balmer, two (2) householders of my county, who were by me on the same day duly sworn to make a true inventory and appraisement of all the property so attached—

I made a true inventory and appraisement of all the property so attached, and which said inventory and appraisement is signed by the said householders and by myself and is returned with this order, and on the same day I left a true copy of this order.

Fees: Service, $1.00; appraisement, $1.00; appraisers' fees, $2.00; summonsing two (2) appraisers, $1.00; mileage, .40 $5 40

E. S. W. DROUGHT, *Sheriff,*
By W. H. RYUS, *Deputy Sheriff.*

As amended Dec. 3, 1883. See page 132.

Endorsed: Appearance docket "D," No. 1734. District court, Wyandotte county. Copy of attachment. Issued May 16th, 1874. Returnable May 26th, A. D. 1874. Henry Seegar *vs.* Joseph E. Snyder. Brumback and Traber, plaintiff's attorneys. Filed May 25th, 1874. G. W. Betts, clerk.

In the Tenth District Court in and for the County of Wyandotte and State of Kansas.

HENRY R. SEEGAR, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant.

Henry R. Seegar, being duly sworn, deposes and says that the said defendant, Joseph E. Snyder, has property in this the State of Kansas which is subject in this action to be taken and appropriated to the payment of the debts of the defendant; that he, the said defendant, is a non-resident of the State of Kansas, and that service of summons cannot be made upon him in this the said State of Kansas.

HENRY R. SEEGAR.

Sworn to before me and subscribed in my presence this 25th day of June, 1874.

[SEAL.] JOSEPH L. NORMAN,
Notary Public in and for the County of Jackson and State of Missouri.

Endorsed: 1734. Henry R. Seegar *vs.* Joseph E. Snyder. Affidavit. Filed June 25th, 1874. G. W. Betts, clerk.

108 & 109 *Publication Notice.*

To Joseph E. Snyder:

You will take notice that a petition has been filed against you in the tenth judicial district court of the State of Kansas, in the county of Wyandotte, by Henry R. Seegar as plaintiff and against you, the said Joseph E. Snyder, as defendant.

That you have been sued by him in said court and must answer the petition so filed by him, the plaintiff, on or before the 15th day of August, 1874, or the same will be taken as true, and judgement, the nature of which will be for the recovery of the sum of four hundred and eighty-one dollars and fifty cents ($481.50) and interest thereon from the 18th day of October, 1873, at the rate of six (6) per cent. per annum, by said plaintiff against said defendant, *being* the amount including principal, interest, costs of a certain judgement rendered against the said Henry R. Seeger in favor of Charles G. Hopkins in the circuit court of Jackson county, in the State of Missouri, on the 26th day of September, 1871, which judgement was rendered on a certain bond made by Joseph E. Snyder as principal and said Henry R. Seegar as his surety and in favor of said Charles G. Hopkins for the sum of four hundred dollars ($400) and paid by said Seegar, will be rendered accordingly and an order made that a special execution be issued for the sale of the following-described real estate, lying and being in the county of Wyandotte and State of Kansas, viz:

Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point thirty-six hundred four and one-half (3,604½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said first-mentioned point south sixty-one (61) degrees thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to beginning.

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point thirty-five hundred four and one-half (3,504½)

feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west — to the place of beginning.

Also beginning at a point six hundred and forty (640) feet and two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred four and one-half (3,404½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one
110 (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to the place of beginning, which has been levied upon and attached in this cause as the property of the said Joseph E. Snyder, returnable, according to law, to satisfy said debt, interest, and the costs of this suit.

HENRY R. SEEGAR,
By his attorneys, GAGE AND LADD AND
BRUMBACK AND TRABER.

Affidavit for Publication.

STATE OF KANSAS, }
Wyandotte County, } *ss:*

Richard B. Taylor, being first duly sworn, deposes and says that he is the editor and publisher of the Wyandotte Gazette, a newspaper printed and published weekly in the city of Wyandotte, in said county, and of general circulation therein; that a notice, of which the following and annexed is a true and perfect copy, was published in said newspaper three (3) consecutive weeks, the first publication thereof being on the third (3rd) day of July, A. D. 1874, and the last on th- 17th day of July, A. D. 1874.

R. B. TAYLOR.

Subscribed in my presence and sworn to before me this 7th day of September, A. D. 1874.

[SEAL.] D. R. CHURCHILL,
Probate Judge.

Publication, $14.00; affidavit, .25---------- $14 25

Wyandotte City, January 23rd, 1885.—Received of L. Traber the sum of $14.25, in full of printer's fees in above-entitled cause.

R. B. TAYLOR.

(Endorsed:) 1734. Henry R. Seegar *vs.* Joseph E. Snyder. Proof of publication. Filed September 10th, 1874. G. W. Betts, clerk.

THE STATE OF KANSAS,
Tenth Judicial District, State of Kansas, } *ss:*

At a session of the district court, sitting within and for the said county of Wyandotte, begun and held at the court-house, in the city of Wyandotte, in said county, on the 7th day of September, 1874, as by statute required—there being present Hon. Hiram Stevens, judge of said judicial district, and E. S. W. Drought, sheriff, and G. W. Betts, clerk of the district court of said county—*and* the following proceedings are had:

THURSDAY, *September 10th, A. D.* 1874.

HENRY R. SEEGAR
vs.
JOSEPH E. SNYDER. } No. 1734.

Now, at this day, comes the plaintiff, by Gage and Ladd and Brumback and Traber, his attorneys, and files herein proof of service by publication, duly and legally made on the defendant, which notified him of the pendency and object of this action and suit, which publication was made for three (3) consecutive weeks in the Wyandotte Gazette, a newspaper printed and published weekly in the city of Wyandotte and State of Kansas and of general circulation in said county.

Whereupon such service is approved by the court, and this cause com- on regularly for hearing and the same b-ing now heard by the court upon the petition, evidence, and proof, and the court, being fully advised in the premises, finds that the defendant has been duly and legally notified of the pendency and object of this suit, and that all and singular the allegations in said plaintiff's petition are
111 true, and that said defendant is justly and legally indebted to said plaintiff in the sum of five hundred and fifteen dollars ($515.00).

It is therefore considered, ordered, and adjudged by the court that the said plaintiff have and recover of said defendant the said sum of five hundred and fifteen dollars ($515.00) and his costs herein, and that the judgement herein bear interest at the rate of six (6) per cent. per annum.

And it is further ordered and adjudged by the court that the said plaintiff have hereof execution against the said real estate herein attached, situate in the county and State aforesaid, described as follows:

Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-six hundred four and one-half (3,604½) feet north

twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said first-mentioned point south sixty-one (61) degrees and thirty (30) minutes west along the northeast line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the beginning;

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-five hundred four and one-half (3,504½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning.

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred four and one-half (3,404½) feet north of the southeast corner of section number eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning.

Precipe.

NOV. 4TH, 1874.

District Court, Wyandotte County, Kansas.

HENRY R. SEEGAR }
vs.
JOSEPH E. SNYDER. }

To the clerk of said court:

Issue special execution in the above-entitled cause, returnable according to law, directed to the sheriff of Wyandotte county, Kansas.

GAGE AND LADD AND
BRUMBACK AND TRABER,
Attorneys for Plaintiff.

15—145

112 Endorsed: District court of Wyandotte county, Kansas. Filed November 3rd, A. D. 1874. G. W. Betts, clerk, per J. W. Reed, D. C.

THE STATE OF KANSAS,
Tenth Judicial District, Wyandotte County, } *ss:*

At a session of the district court, held within and for said county of Wyandotte, begun and held at the court-house, in the city of Wyandotte, county of Wyandotte, on the tenth day of September, 1874, as by statute required—there being present Hon. Hiram Stevens, judge of said judicial district; E. S. W. Drought, sheriff, and G. W. Betts, clerk of the district court of said county—*and* the following proceedings are had:

THURSDAY, *September 10th, A. D.* 1874.

HENRY R. SEEGAR
vs. } No. 1734.
JOSEPH E. SNYDER.

Now, at this day, *came* the plaintiff, by Gage and Ladd and Brumback and Traber, his attorneys, and files herein proof of service by publication duly and legally made on the defendant and which notified him of the pendency and object of this action and suit, which publication was made for three (3) consecutive weeks in the Wyandotte Gazette, a newspaper published and printed weekly in the city of Wyandotte, county of Wyandotte and State of Kansas, and of general circulation in said county.

Whereupon such service is approved by the court; and this cause coming on regularly for hearing, and the same being now heard by the court upon the petition, evidence, and proof, and the court, being fully advised in the premises, finds that the said defendant has been duly and legally notified of the pendency and object of this suit, and that all and singular the allegations in said plaintiff's petition are true, and that said defendant is justly and legally indebted to this plaintiff in the sum of five hundred and fifteen ($515.00) dollars.

It is therefore considered and adjudged by the court that said plaintiff have and recover of said defendant the said sum of five hundred and fifteen dollars ($515.00) and his costs herein, and that the judgement bear interest at the rate of six (6) per cent. per annum.

And it is further ordered and adjudged by the court that said plaintiff have hereof execution against the said real estate herein attached, situate in the county and State aforesaid and described as follows:

Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point thirty-six hundred four and one-half (3,604½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said first-mentioned point south sixty-

one (61) degrees thirty (30) minutes west along the northwest corner of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to beginning.

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-five hundred four and one-half (3,504½) feet north twenty-eight (28) degrees and thirty (30) minutes
113 west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to the place of beginning.

Also beginning at a point six hundred and forty (640) feet two inches south sixty-one (61) degrees and thirty (30) minutes west from another point thirty-four hundred four and one-half (3,404½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, and running from said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to the place of beginning.

STATE OF KANSAS, }
County of Wyandotte, } *ss:*

I, G. W. Betts, clerk of the district court in and for said county, do hereby certify that the within and foregoing is a full, true, and correct copy of certain proceedings had in said court and *that* in the cause therein entitled as the same appears of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Wyandotte, this 24th day of November, A. D. 1874.

[SEAL.] G. W. BETTS, *Clerk.*

STATE OF KANSAS, }
Tenth Judicial District, County of Wyandotte. }

To the sheriff of the county of Wyandotte, in said county and State, Greeting:

These are therefore to command you that of the said described

lands and tenements you cause to be made the debt and costs aforesaid, together with the costs of increase, this day taxed at five dollars and ninety-five cents ($5.95), and accruing costs herein, and that you have the same before the court aforesaid in sixty (60) days from this date, in the city of Wyandotte and county aforesaid, and that you then and there certify how you shall have executed this writ.

Witness my hand and the seal of said court affixed, at my office, in the city of Wyandotte, this 24th day of November, A. D. 1874.

[SEAL.] G. W. BETTS, *Clerk.*

Appraisement.

In the District Court of the State of Kansas in and for the County of Wyandotte.

HENRY R. SEEGAR
vs.
JOSEPH E. SNYDER.

We, the undersigned, householders of the said county of Wyandotte, having been duly summonsed and sworn by E. S. W. Drought, sheriff of said county, to make an impartial appraisement upon actual view of certain lands and tenements situated therein, do estimate the real value of said property as follows, viz:

All that certain tract of land described as beginning at a
114 point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point thirty-six hundred four and one-half (3,604½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and running from said first-named point south sixty-one (61) degrees thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of five hundred dollars ($500.00).

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-five hundred four and one-half (3,504½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said county of Wyandotte, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees

thirty (30) minutes west one hundred (100) feet to the beginning, at the sum of five hundred dollars ($500.00).

And also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred four and one-half (3,404½) feet north twenty-eight (28) *inches* thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at five hundred dollars ($500.00).

Dated at Wyandotte, December 1st, A. D. 1874.

R. E. CABLE,
ROBERT TALTON,
THOMAS APPLEBY SHAW, } *Appraisers.*

115 *Sheriff's Sale.*

By virtue of two special executions issued by the clerk of the district court of the county of Wyandotte and State of Kansas in favor of Henry R. Seegar and C. F. Welland and against Joseph E. Snyder, and to me, the undersigned sheriff of the county of Wyandotte and State of Kansas, directed, I will, at the court-house, in the city of Wyandotte, in said county of Wyandotte, on Wednesday, January 20th, A. D. 1875, between the hours of ten (10) a. m. and four (4) p. m., offer for sale at public auction the following-described real estate, situate in the county of Wyandotte and State of Kansas, to wit:

Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-six hundred four and one-half (3,604½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said first-named point south sixty-one (61) degrees thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning.

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-five hundred four and one-half (3,504½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11),

range twenty-five (25), Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to the place of beginning.

Also beginning at a point six hundred — (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes from another point thirty-four hundred four and one-half (3,404½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section number eleven (11), township eleven (11), range twenty-five (25), in said county of Wyandotte, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning.

Dated Wyandotte, December 18th, 1874.

E. S. W. DROUGHT,
Sheriff of Wyandotte County, Kansas.

Affidavit of Publication.

STATE OF KANSAS, }
Wyandotte County, } *ss:*

Richard B. Taylor, being first duly sworn, deposes and says that he is the editor and publisher of the "Wyandotte Gazette," a newspaper printed and published weekly in the city of Wyandotte, in said county, and of general circulation therein; that a notice, of which the annexed is a true copy, was published in said
116 newspaper five (5) consecutive weeks, the first publication thereof being on the 18th day of December, A. D. 1874, and the last on the 15th day of January, A. D. 1875.

R. B. TAYLOR.

Subscribed in my presence and sworn to *it* before me this 23rd day of January, A. D. 1875.

[SEAL.] G. W. BETTS, *Clerk.*

Publication, $15.00; affidavit, .25 ---------- $15 25

Received payment of L. Traber January 23rd, 1875.

R. B. TAYLOR.

Return of Special Execution.

STATE OF KANSAS, *County of Wyandotte,* } ss:

Received this special execution on the 24th day of November, A. D. 1874, and, according to the commands therein contained, I did, on the 1st day of December, A. D. 1874, call an inquest of three (3) disinterested householders of my county, residents therein, viz., Robert Talton, R. E. Cable, and Thomas Appleby Shaw, and administered to them an oath impartially to appraise the property in said special execution mentioned upon actual view, and thereupon, to wit, on the — day of ——, 18—, said householders returned to me, under their hands, an estimate of the real value of said property and which is hereto attached and made a part thereof, and I did, on the 3rd day of December, 1874, deposit with the clerk of the district court of my county a copy of such return; and thereupon, to wit, on the 18th day of December, A. D. 1874, I caused a public notice to be given that I would sell said property at public auction, at the court-house, in my county, on the 20th day of January, 1875, between the hours of ten (10) a. m. and four (4) p. m., by advertisement in the Wyandotte Gazette, a newspaper printed and published in my county, proof of which advertisement is hereto annexed and made a part hereof, and at the time and place stated in said notice I offered said property for sale at public auction, and the first-described parcel of land was then and there duly struck off and sold to L. Traber for the sum of three hundred and thirty-four dollars ($334.00), and the second-described parcel of land was also then and there duly struck off — sold to L. Traber for the sum of three hundred and thirty-four dollars ($334.00), and the third-described parcel of land was then and there duly struck off and sold to L. Traber for the sum of three hundred and thirty-four dollars ($334.00).

E. S. W. DROUGHT,
Sheriff of Wyandotte County, Kansas.

Fees: Appraisement, $1.00; summonsing three appraisers, $1.00; offering for sale, $1.00; deed, $2.50; expense appraisers' fees, $1.50; printer's fees, $15.25—$23.25.

Endorsed: No. 1734. District court, Wyandotte county, Kansas. Henry R. Seegar *vs.* Joseph E. Snyder. Debt, with int. six per cent., $515.00. Costs, $27.25. Increase costs, $5.95. Total, $548.20. Filed March 5th, 1875. G. W. Betts, clerk.

117 *Copy of Appraisement.*

In the District Court of the State of Kansas in and for the County of Wyandotte.

HENRY R. SEEGAR
vs.
JOSEPH E. SNYDER. } No. 1734.

We, the undersigned householders of the county of Wyandotte, having been duly summoned and sworn by E. S. W. Drought, sheriff of said county, to make an impartial appraisement *of* upon actual view of certain lands and tenements situate therein, do estimate the real value of said property as follows, viz:

All that certain tract described as—

Beginning at a point six hundred (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-six hundred four and one-half (3,604½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said first-named point south sixty-one (61) degrees thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the beginning, at the sum of five hundred dollars ($500.00).

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one degrees thirty (30) minutes west from another point thirty-five hundred four and one-half (3,504½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section number eleven (11), township eleven (11), range twenty-five (25), *at* said county of Wyandotte, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eight--nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of five hundred dollars ($500).

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred four and one-half (3,404½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, and running from said first-named point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet; thence

south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of five hundred dollars ($500).

R. E. CABLE,
ROBERT TALTON,
THOMAS APPLEBY SHAW,
Appraisers.

Endorsed: No. 1734. Henry R. Seegar *vs.* Joseph E. Snyder. Copy of appraisement. Filed December 3rd, 1874. G. W. Betts, clerk.

118 THE STATE OF KANSAS, } *ss:*
Tenth Judicial District, Wyandotte County, }

At a session of the district court, sitting within and for said county of Wyandotte, begun and held at the court-house, in the city of Wyandotte, in said county of Wyandotte, on the 5th day of April, 1875, as by statute required—there being present Hon. Hiram Stevens, judge of said judicial district, and E. S. W. Drought, sheriff, and G. W. Betts, clerk of the district court of said county, the following proceedings are had:

FRIDAY, *April 9th, A. D.* 1876.

HENRY R. SEEGAR }
vs. } No. 1734.
JOSEPH E. SNYDER. }

Now, on this day, comes the said plaintiff, by his attorneys, Brumback and Traber, and moves the court to confirm the sale of real estate hereinbefore made by the sheriff of the county of Wyandotte under a special execution in this cause issued, and, the court having carefully examined the proceedings of said sheriff under said special execution and being fully satisfied that the sale has been made in all respects in conformity to law, said motion is by the court sustained, and it is ordered that said sheriff make to the purchaser at such sale a deed to the real estate as required by law.

In the District Court of Wyandotte County, Kansas, for the Tenth Judicial District of Kansas.

HENRY R. SEEGAR }
vs. } No. 1734.
JOSEPH E. SNYDER. }

Now, at this day, comes the plaintiff, Henry R. Seegar, by his attorney, and moves the court for an order allowing the sheriff of said county who served the process in the above cause to amend and perfect, according to the facts and truth of the matter, the re-

turn of the writ of attachment dated May 16th, 1874, as issued herein.

L. TRABER,
Attorney for Plaintiff.

Endorsed: 1734. Henry R. Seegar *vs.* Jos. E. Snyder. Motion for leave to sheriff to amend attachment ret. Filed December 4th, 1882. G. W. Betts, clerk. L. Traber, attorney for plaintiff.

In the District Court of Wyandotte County, Kansas, for the Tenth Judicial District of Kansas.

HENRY R. SEEGAR, Plaintiff,
vs.
JOS. E. SNYDER, Defendant. } No. 1734.

Said defendant having died intestate, said plaintiff hereby notifies the widow and children of said defendant, they being sole heirs of said defendant, that on the first day of the next term of said court (which being on December 4th, 1882), at ten (10) o'clock a. m., or as soon thereafter as counsel can be heard, said plaintiff will apply to said court for an order allowing the sheriff of said county who served the process to amend and perfect, according to the facts and truth of the matter, the return of the writ of attachment dated May 16th, 1874, issued herein.

L. TRABER,
Attorney for Plaintiff.

119 STATE OF MISSOURI, } *ss:*
County of Jackson, }

William K. Hawkins, being first duly sworn, deposes and says that he made service of the above annexed and foregoing notice on Mrs. Teresa Snyder, widow of Mr. Joseph E. Snyder, deceased, and also on her sons, James D. Snyder and Eugene Snyder, on (and on her sons, Fred. and Casper Snyder, on Friday, December 1st, 1882) Wednesday, November 29th, 1882, by delivering to and leaving with each of them a true and correct copy of said notice at Kansas City, Missouri.

WILLIAM K. HAWKINS.

Subscribed and sworn to before me this 2nd day of December, 1882.
[SEAL.] J. N. EMMETT,
Notary Public.

Endorsed: 1734. Henry R. Seegar *vs.* Joseph E. Snyder. Notice for leave to sheriff to amend writ. Filed December 4th, 1882. G. W. Betts, clerk. L. Traber, attorney for plaintiff.

In the District Court of Wyandotte County, Kansas.

HENRY R. SEEGAR, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant.

STATE OF KANSAS,
Wyandotte County, } *ss:*

William H. Ryus, being duly sworn, deposes and says that in December, 1872, E. S. W. Drought was sheriff of Wyandotte county and this deponent was his deputy, and that on the 16th day of May, 1874, the writ of attachment in the above-entitled action was received by said sheriff and delivered to this deponent for execution: that on said day and at Wyandotte county he executed said writ by attaching as the property of said Joseph E. Snyder the lands particularly described in the appraisement on file in said action and by declaring on said premises that he attached said property at the suit of Henry R. Seegar; that with F. W. Drought and S. Balmar, two householders of said county and who were by this deponent on the same day first duly sworn to make a true inventory and appraisement of all the property so attached, this deponent made a true inventory and appraisement of the property so attached; which said inventory and appraisement was signed by said householders and this deponent and are on file in this action.

That on the same day this deponent left a true copy of said order of attachment in a conspicuous place on said premises so attached, there being no occupant thereof.

Deponent further says that he wrote out the attachment return on file and filed the same, but by mistake neglected to state therein the fact that he left a copy of the order of attachment in a conspicuous place upon the attached premises, and also neglected to sign the return.

W. H. RYUS.

Subscribed and sworn to before me this 5th day of December, 1882.

[SEAL.] SARAH E. CLARK,
Notary Public.

Commission expires May 21st, 1884.

Endorsed: No. 1734. District court of Wyandotte county, State of Kansas. Henry R. Seegar *vs.* Joseph E. Snyder, defendant. Affidavit of W. H. Ryus. Filed December 6th, 1882. G. W. Betts, clerk.

120 THE STATE OF KANSAS,
Tenth Judicial District, Wyandotte County, } *ss:*

At a session of the district court, sitting within and for the said county of Wyandotte, begun and held at the court-house, in the city of Wyandotte, in said county, on the 3rd day of December, 1883, as required by law—there being present Hon. W. R. Wagstaff, judge of

said judicial district, and Thomas B. Bowling, sheriff, and L. C. Trickey, clerk of the district court of said county—*and* the following proceedings are had:

WEDNESDAY, *January 2nd, A. D.* 1884.

HENRY R. SEEGAR
vs.
JOSEPH E. SNYDER. } No. 1734.

This day the written motion of the plaintiff, by L. Traber, his attorney, filed December 4th, 1882, and the verbal motion of the late sheriff, E. S. W. Drought, and J. H. Ryus, his deputy, made in open court the same day at the time the plaintiff appeared, and the widow of Joseph E. Snyder also appeared, by John B. Scroggs, her attorney, and the application of L. Traber, the purchaser of the lands at the sheriff's sale made herein, contained in the affidavit of said Traber, dated December 22nd, 1882, for leave for the said sheriff to amend the return on the order of attachment herein according to the facts and truth of the matter, which order of attachment is dated May 16th, 1874, and filed, as shown by endorsement thereon by the clerk, May 25th, 1874—

Coming on for hearing at the regular fall term, 1883, of this court upon the papers and record in this case and other proofs, were argued by C. W. Blair and J. Brumback for said Seegar, said Ryus, and said Traber, and by Nathan Cree and James M. Mason for James M. Mason and Nicholas McIntire, intervenors herein, and by Byron Sherry and Goodin and Kepplinger for Teresa Snyder, and the court, being fully advised in the premises, finds that Joseph E. Snyder died intestate in A. D. 1878, leaving as his sole heirs his widow, Teresa Snyder, and his four (4) children—James D. Snyder, Eugene Snyder, Fred. Snyder, and Casper Snyder, one of whom is a minor.

That written notice of the intention of the plaintiff to file his said motion was served on said Teresa Snyder, James D. Snyder, and Eugene Snyder on November 29th, 1882, and on said Fred. Snyder and Casper Snyder on December 1st, 1882, by delivering to each of them *of* a copy of such notice, which service was made by delivering such copies at their residence in Jackson county, State of Missouri, and that there was failure of said sheriff Drought and of his said deputy to sign the returns attached to and now on said order of attachment.

It is now, therefore, ordered that said E. S. W. Drought, sheriff in 1874, who, by W. H. Ryus, his deputy, executed the order of attachment herein, so far as the same was executed, has leave to amend said return now attached to and put on said order of attachment by signing the same, such signing to be by said Drought signing his own name as sheriff, or by said Ryus signing E. S. W. Drought, by W. H. Ryus, deputy sheriff, or by both.

But no other amendment to or alteration of such returns shall be made, and the court overrules said motions in all other respects, because the court finds that the facts do not justify any further

amendment, and that the preponderance of the evidence is against any such further proposed amendments.

Said plaintiff Seegar, said Drought, said Ryus, and said Traber each severally except to the refusal of the court to grant leave to amend said returns further, and so as to show that there was no occupant on the land attached, and also that the sheriff posted a copy of the order of attachment in a conspicuous place on the land.

121 And the said McAlpine and Mason, interveners, as well as said Teresa Snyder, each severally excepted to the sustaining of said motion so far as relates to permitting the signatures of the officers to be attached to said return.

SATURDAY, *January 5th, A. D.* 1884.

HENRY R. SEEGAR
vs.
JOSEPH E. SNYDER. } No. 1734.

At this day Henry R. Seegar, E. S. W. Drought, W. H. Ryus, L. Traber are allowed until February 15th, 1884, to make and serve a case made for the Supreme Court, and defendant and interpleaders James M. Mason and N. McAlpine are granted fifteen (15) days thereafter to suggest amendments thereto and three (3) days thereafter to present, sign, and serve case made.

HENRY R. SEEGAR
vs.
JOSEPH E. SNYDER. } 1734.

At this day the defendant in the above case, 1734, and the interpleaders in said case, J. M. Mason and N. McAlpine, are allowed sixty (60) days to make and serve a case made for the Supreme Court, and plaintiff in said case is allowed fifteen (15) days thereafter to suggest amendments thereto and three (3) days thereafter to present, sign, and settle case made.

STATE OF KANSAS,
Wyandotte County, } *ss:*

I, L. C. Trickey, clerk of the district court in and for said county and State, hereby certify the above and foregoing to be a full, true, and complete copy of all pleadings and journal entries in within-entitled cause as same appears of record and on file in my office, and that the same is a complete record of said case excepting certain affidavits, motions, and depositions, &c., filed in relation to motion for sheriff to amend returns on order of attachments and filed after date of filing of said motion.

Witness my hand and the seal of said court affixed hereto, in my office, in the city of Wyandotte, this 9th day of May, 1885.

[SEAL.] L. C. TRICKEY,
Clerk District Court.

STATE OF KANSAS, }
County of Wyandotte. }

I, W. R. Wagstaff, judge of the tenth judicial district of said State and presiding judge of the district court of said county, do hereby certify that L. C. Trickey, by whom the foregoing attestation was made, was at the date thereof clerk of the district court, duly qualified, and that the same is in due form of law and made by the proper officer.

Dated May 9th, 1885.

W. R. WAGSTAFF.

STATE OF KANSAS, }
County of Wyandotte, } *ss:*

I, L. C. Trickey, clerk of the district court in and for said county, do hereby certify that Hon. W. R. Wagstaff, whose genuine signature is subscribed to the foregoing certificate, was at the date thereof president judge of said court, duly commissioned, sworn, and acting.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at the city of Wyandotte, this the 9th day of May, A. D. 1885.

[SEAL.] L. C. TRICKEY, *Clerk.*

Cost of transcript $8.75. Received of Tourtelotte and Allcutt, by J. Brumback, $8.75.

L. C. TRICKEY, *Clerk.*

122 And the original orders of attachment and the returns of the sheriff thereon read in evidence were in words and figures as follows, to wit:

Attachment.

In the District Court of the State of Kansas in and for Wyandotte County.

C. F. WELLAND, Plaintiff, }
versus }
JOSEPH E. SNYDER, Defendant. }

The State of Kansas to the sheriff of Wyandotte county, in said State, Greeting:

You are hereby commanded to attach and safely keep the lands, tenements, goods, chattels, stocks, rights, credits, moneys, and effects of the defendant, Joseph E. Snyder, in your county now exempt by law from being applied to the payment of the claim of the plaintiff or so much thereof as will satisfy his claim for two hundred and fifty ($250.00) dollars, with interest at the rate of ten (10) per cent. per annum from the eighth (8th) day of February, A. D. 1869, and fifty dollars ($50.00), the probable costs of this action.

And of your proceedings hereunder make due return within ten (10) days from the date hereof.

Witness my hand and the seal of said court, affixed at my office, in the city of Wyandotte, this the sixteenth day of May, A. D. 1874.

[SEAL.]

G. W. BETTS,
By J. W. REED, *D. C.*

The appraisement and return of sheriff attached to said writ are as fol-:

Appraisement in Attachment.

In the District Court of the State of Kansas in and for the County of Wyandotte.

C. F. WELLAND
vs.
JOSEPH E. SNYDER.

We, the undersigned, W. H. Ryus, under sheriff of the said county of Wyandotte, with F. W. Drought and S. Bolmar, householders of said county, do hereby make a true inventory and appraisement of all the property attached by the said sheriff by virtue of the order of attachment in said cause issued and in his hands for execution as follows, to wit:

Lands and Tenements in said County.

Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point thirty-four hundred four and one-half (3,404½) feet north twenty-eight degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and running from said first-named point south sixty-one (61) degrees and thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of four hundred and thirty-three dollars and thirty-three and one-third cents ($433.33⅓).

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-five hundred four and one-half (3,504½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and run-
123 ning from said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees

thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of four hundred and thirty-three dollars and thirty-three and one-third cents ($433.33\frac{1}{3}$).

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred four and one-half (3,404½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of four hundred and thirty-three dollars and thirty-three and one-third cents ($433.33\frac{1}{3}$).

E. S. W. DROUGHT, *Sheriff*,
By W. H. RYUS, *Deputy Sheriff*,
F. W. DROUGHT.
S. BOLMER.

Return following such appraisement and attached thereto as well as to order of attachment, viz:

Attachment Return.

STATE OF KANSAS, } ss:
County of Wyandotte, }

Received this order of attachment on the 16th day of May, A. D. 1874, at — o'clock — m., and thereupon, to wit, on the 16th day of May, 1874, at my county, I attached as the property of the within-named Joseph E. Snyder as described in the appraisement hereto attached and made a part of this return by declaring on the premises that I attached said property at the suit of the within-named C. F. Welland, subject to attachment on the same day made in favor of Henry R. Seegar, issued from the 10th judicial district court, Wyandotte county, Kansas, by taking the same into my possession and now hold the same subject to the order of the court, and with F. W. Drought and S. Balmer, two householders of said county, who were by me on the same day first duly sworn to make a true inventory and appraisement of all the property so attached, I made a true inventory and appraisement of all the property so attached, and which said inventory and appraisement is signed by the said householders and by myself and is returned with this order, and on the same day I left a true copy of this order.

Fees.

Service	$1 00
Appraisement	1 00
Appraisers' fees	1 00
Milage, .40	40
	$5 40

E. S. W. DROUGHT, *Sheriff*,
By W. H. RYUS, *Deputy Sheriff*.

As amended December 3rd, 1883; see page 132; see page 163.

Endorsed: Appearance docket "D," No. 1735. District court of Wyandotte Co. Attachment. Issued May 16th, A. D. 1874. Returnable May 26th, A. D. 1874. C. F. Welland *vs.* Joseph E. Snyder. Brumback and Traber, plaintiff's attorneys. Filed May 25th, A. D. 1874. G. W. Betts, clerk.

124 *Copy of Original Order of Attachment and Return Thereon.*

Attachment.

In the District Court of the State of Kansas in and for the County of Wyandotte.

HENRY R. SEEGAR, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant.

The State of Kansas to the sheriff of the county of Wyandotte, in said State, Greeting:

You are hereby commanded to attach and safely keep the lands, tenements, goods, chattels, stocks, rights, credits, moneys, and effects of the defendant, Joseph E. Snyder, in your county not exempt by law from being applied to the payment of the claim of the plaintiff or so much thereof as will satisfy his claim for four hundred and eighty-one dollars and fifty cents ($481.50), with interest at the rate of six (6) per cent. per annum from the 18th day of October, A. D. 1873, and fifty dollars ($50.00), the probable costs of this action.

And of your proceedings hereunder make due return within ten (10) days from the date hereof.

Witness my hand and the seal of said court, affixed at my office, in the city of Wyandotte, this the sixteenth (16th) day of May, A. D. 1874.

[SEAL.]

G. W. BETTS, *Clerk*,
Per J. W. REED, *D. C.*

Attached to said original order and return thereon there is an appraisement as follows, viz:

Appraisement in Attachment.

In the District Court of the State of Kansas in and for the County of Wyandotte.

HENRY R. SEEGAR
vs.
JOSEPH E. SNYDER.

We, the undersigned, W. H. Ryus, under sheriff of the said county of Wyandotte, with F. W. Drought and S. Bolmar, householders of said county, do hereby make a true inventory and appraisement of all the property attached by the said sheriff by virtue of an order of attachment in said cause issued and now in his hands for execution as follows, to wit:

Lands and Tenements in said County.

Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-six hundred four and one-half (3,604½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of four hundred and thirty-three dollars and thirty-three and one-third cents ($433.33⅓).

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point thirty-five hundred four and one-half (3,504½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township
125 eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and running from said beginning point south sixty-one degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of four hundred and thirty-three dollars and thirty-three and one-third cents ($433.33⅓).

Also beginning at a point six hundred forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from

another point thirty-four hundred four and one-half (3,404½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven, township eleven (11), range twenty-five (25), of Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of four hundred and thirty-three dollars and thirty-three and one-third cents ($433.33⅓).

16th day of May, 1874.

E. S. W. DROUGHT, *Sheriff*,
By W. H. RYUS, *Deputy Sheriff*.
F. W. DROUGHT.
S. BALMER.

Copy of original return on order of attachment in which return foregoing appraisement is attached, viz:

Attachment Return.

STATE OF KANSAS, } ss:
County of Wyandotte, }

Received this order of attachment on this 16th day of May, A. D. 1874, at — o'clock — m, and thereupon, to wit, on the 16th day of May, 1874, at my county, I attached the property of the within-named Joseph E. Snyder as described in the appraisement hereto attached and made a part of this return by declaring on the premises—

That I attached said property at the suit of the within-named Henry R. Seegar and by taking the same into my possession, and now hold the same subject to the order of the court, and with F. W. Drought and S. Bolmar, two householders of my county, who were by me on the same day first duly sworn to make a true inventory and appraisement of all the property so attached, I made a true inventory and appraisement of all the property so attached, and which said inventory and appraisement is signed by the said householders and by myself and is returned with this order, and on the same day I left I true copy of this order.

Fees: Service, $1.00; appraisement, $1.00; appraisers' fees, $2.00; summonsing appraisers, $1.00; mileage, .40..... $5 40

E. S. W. DROUGHT, *Sheriff*,
By W. H. RYUS, *Deputy Sheriff*.

As amended Dec. 8, 1883. See page- 132, 163.

Endorsed: Appearance docket "D," No. 1734. District court, Wyandotte county. Copy of attachment. Issued May 16th, 1874.

Returnable May 26th, 1874. Henry R. Seegar *vs.* Joseph E. Snyder. Brumback and Traber, plaintiff's att'ys. Filed May 25th, 1874. G. W. Betts, clerk.

126 Plaintiff next offered in evidence deed from the said Lafayette Traber and wife and Joseph L. Norman and wife to the plaintiffs in this case, of date March 10th, 1879.

Counsel for defendants object to the introduction of this evidence as incompetent, irrelevant, and immaterial and on the ground that the grantors had no title.

The court overruled the objection; to which ruling of the court the defendants at the time excepted.

Said deed was in words and figures as follows, to wit:

L. Traber and J. L. Norman and Wives
to
George W. Tourtelotte *et al.*

Warranty Deed.

Know all men by these presents, that Lafayette Traber and Ella A. Traber his wife, and Joseph L. Norman and M. Jane Norman, his wife, of the county of Jackson in the State of Missouri, have this day for and in consideration of the sum of one thousand dollars ($1,000) to the saif Lafayette Traber and Joseph L. Norman, in hand paid by George W. Tourtelotte and George P. Allcutt of the county of Jackson and State of Missouri, granted, bargained and sold and by these presents do grant, bargain and sell unto the said George W. Tourtelotte and George P. Allcutt, the following-described tracts or parcels of land situate in the county of Wyandotte, and State of Kansas—that is to say:

Beginning six hundred and forty (640) feet two (2) inches sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred eighty-four and one-half (3,484½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25) in said Wyandotte county, and running thence from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred and eighty (180) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred and eighty (180) feet; to the place of beginning and being part of the land conveyed to said Traber by W. H. Ryus, sheriff of Wyandotte county, Kansas, by deed dated and acknowledged the 8th day of March, 1879, to have and to hold the premises hereby conveyed with all the rights, privileges and appurtenances thereunto belonging or in anywise appertaining unto said George W. Tourtelotte and George P. Allcutt, thrie heirs and assigns forever.

The said Lafayette Traber and Joseph L. Norman, hereby cov-

enanting to and with the said George W. Tourtelotte and George P. Allcutt, their heirs and assigns for themselves their heirs, executors and administrators to warrant and defend the title to the premises hereby conveyed against the claim of every person whomsoever, except taxes for the year 1879.

In witness whereof we have hereunto subscribed our names and affixed our seals this tenth day of March, 1879.

LAFAYETTE TRABER. [SEAL.]
ELLA A. TRABER. [SEAL.]
JOS. L. NORMAN. [SEAL.]
M. J. NORMAN. [SEAL.]

STATE OF MISSOURI, } ss:
County of Jackson, }

Be it remembered that Lafayette Traber and Ella A. Traber and Jos. L. Norman and M. Jane Norman, his wife, who are personally known to the undersigned, a notary public within and for said county, to be the persons whose names are subscribed to the
127 foregoing deed as parties thereto, this day appeared before me and acknowledged that they executed and delivered the same as their voluntary act and deed for the uses and purposes therein mentioned; and the said Ella A. Traber and M. Jane Norman, being by me made acquainted with the contents of said deed, acknowledged on an examination apart from *her* said husband that *she* executed the same and relinquished their dower in the real estate therein mentioned freely and without compulsion and undue influence on the part of their said husbands.

I further certify that my commission expires 19th day of December, 1881.

Given under my hand and notarial seal this the 10th day of March, 1879.

[SEAL.]

D. ELLISON,
Notary Public.

Filed for record this 12th day of March, A. D. 1879, 4½ o'clock p. m., Record Book "5," page- 8, 9, & 10.

J. S. CLARK,
Register of Deeds.

Filed June 1st, 1885. A. S. Thomas, clerk. No. 4668.

It was here admitted and agreed by the parties that the rental value of the property in dispute is twenty dollars ($20.00) per month.

Plaintiffs rested their case.

128 And thereupon the defendants filed a demurrer to the evidence of plaintiffs; which demurrer is in words and figures as follows, to wit:

In the District Court of Shawnee County, State of Kansas.

GEORGE W. TOURTELOTTE and GEORGE P. ALLCUTT, Plaintiffs,
vs.
CHARLES WILKINS, JOHN SPERING, WILLIAM WILLIS, NICHOLAS McALPINE, JAMES M. MASON, and ANNIE MASON, His Wife, Defendants.

Demurrer to Evidence.

Come now the defendants in the above-entitled action and demur to the evidence of the plaintiffs introduced in this trial of above-entitled cause for the reason that the same does not prove or tend to prove a cause of action in favor of the plaintiffs.

JAMES M. MASON,
JOHN W. DAY AND
N. CREE,
Attorneys for Defendants.

The above demurrer coming on for hearing, *and* thereupon, after argument by counsel and the court being fully advised in the premises, the court doth overrule the demurrer to the evidence of plaintiffs.

To which ruling and action of the court the defendants at the time excepted.

And thereupon the defendants, to sustain the issues on their part, introduced evidence as follows, to wit:

First. The patent from the United States to Silas Armstrong, copied on pages 28, 29, and 30 above.

And defendants next read in evidence the deed from Silas Armstrong and wife to David E. James, copied on pages 31, 32, 33, and 34 above; pages 179, 180, 181, 182, 183, 184, and 185 of case made by defendants and submitted to the court are now cut out.

129 Defendant next offered in evidence certified copy of a mortgage of said James to Silas Armstrong.

Plaintiffs objected to the introduction of the evidence as incompetent, irrelevant, and immaterial.

Which objection was by the court overruled; to which ruling of the court plaintiffs at the time excepted.

The mortgage was in words and figures as follows, to wit:

Know all men by these presents that I, David E. James, of the county of Wyandotte and Territory of Kansas, for the sum of one dollar ($1.00) to me paid by said Silas Armstrong, of the county and Territory aforesaid, do grant, bargain, sell, and mortgage unto the said Silas Armstrong and his heirs and assigns the following piece or parcel of land lying and being in the county of Wyandotte and Territory of Kansas, namely:

One undivided three-eighths of that tract of land situate and lying in the forks of the Kansas and Missouri rivers and north of the old bed of Turkey creek and bounded on the south by said old bed of Turkey creek, on the east by the Missouri State line, and on the north by the Missouri river, and on the west by the Kansas

river, and consisting of fractional sections numbers ten (10), eleven (11), fourteen (14), fifteen (15), the said undivided three-eighths (3/8) containing about ninety (90) acres, more or less, and being the same tract or parcel of land or the same one undivided three-eighths (3/8) of said land in the fork of the Missouri and Kansas rivers this day conveyed to David E. James by said Silas Armstrong and Celinda, his wife, and this deed is made to secure the payment of the purchase-money of the said land in the manner and in the — and upon the conditions aforesaid; provided and conditioned that if the said David E. James shall well and truly pay unto the said Silas Armstrong at the rates of the sum of fifty dollars ($50.00) per acre for said undivided three-eighths (3/8) of the aforesaid tract of land or said ninety (90) acres, more or less, as it may be—

And said purchase-money is to be paid said Armstrong in the manner as follows, namely, forty (40) per centum of all the money or monies as fast as realized and received in hand by the said James on the sale or sales of said land or any part thereof according to the manner and condition of sales agreed to by said Armstrong and said James in another article of agreement of even date herewith and which is made part hereof, and the said forty (40) per cent. is to be paid said Armstrong according as the sale or sales of said land according to said condition at the aforesaid rate of fifty dollars ($50.00) per acre, then this deed to be void and of no effect whatsoever; otherwise this mortgage deed to be binding and of effect.

In testimony whereof I have hereunto set my hand and seal this eighteenth (18th) day of July, A. D. 1859.

DAVID E. JAMES.

Witness:
GEORGE B. WOOD.

TERRITORY OF KANSAS, } ss:
County of Wyandotte, }

I, Luther H. Wood, a justice of the peace within and for the county aforesaid, do certify that on the 22nd day of July, A. D. 1859, came before me David E. James, who is personally known to be the same persons whose name is subscribed to the foregoing instrument of writing as a party thereto, and acknowledged the same to be his voluntary act and deed for the purposes therein mentioned.

LUTHER H. WOOD,
Justice of the Peace.

Recorded July 23rd, A. D. 1859, at 2.30 p. m.
J. LANE, *Register of Deeds,*
Per JAMES A. CRUISE, *Deputy.*

130 On margin: For and in consideration of the sum of eleven hundred and six dollars ($1,106.00), balance due on this mortgage, in hand received by me this eighteenth day of March, A. D. 1874, of Jennie M. James, administratrix of the estate of D. E. James, deceased, I hereby acknowledge full satisfaction of the same and re-

lease the within-described real estate from the lien of said mortgage.

A. B. BARTLETT,
Administrator of the Estate of Silas Armstrong.

All recorded in volume "B," page 31.

Defendants next offered in evidence a certified copy of a title bond from David E. James to James Gladden and assigned by James Gladden to Henry R. Seegar, dated the 5th day of March, 1860, and recorded in Book "A," page 462, of the records of the county of Wyandotte, October 1, 1860.

Plaintiff objected to the introduction of this evidence, being incompetent, irrelevant, and immaterial. The court overruled the objection; to which ruling of the court the plaintiffs at the time excepted.

The title bond was in words and figures as follows, to wit:

131 Know all men by these presents that I, David E. James, of the county of Wyandotte and Territory of Kansas, do hereby bind myself, my heirs and assigns, to convey unto James Gladden, his heirs and assigns, by a good and valid deed, one undivided ten (10) acres of the west half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of section number eleven (11) and of the east half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of section number ten (10), in township number eleven (11), being in the forks of the Kansas and Missouri rivers, in the county of Wyandotte, Kansas Territory, and all consisting of one undivided ten (10) acres.

It is hereby agreed and covenanted that the aforesaid conveyance shall be made at any time within one year from the date of this instrument. It is also agreed and understood that said conveyance is to be made subject to and in accordance with the terms and conditions of a certain mortgage given upon said real estate by said James to one Silas Armstrong and which is recorded in the proper office of the county of Wyandotte, Kansas Territory.

In witness whereof I have hereunto set my hand and seal this 5th day of March, A. D. 1860.

DAVID E. JAMES. [L. S.]

Know all men by these presents that —, the within-named James Gladden, in consideration of one thousand dollars ($1,000) to me in hand paid by Henry R. Seegar, the receipt whereof I do hereby acknowledge, have bargained, sold, assigned, and set over all my right, title, interest, claim, property, and demand whatsoever in and to the within bond unto the said Henry R. Seegar and his assigns forever.

In witness whereof I have hereunto set my hand and seal this 5th day of March, A. D. 1860.

his
JAMES x GLADDEN. [L. S.]
mark.

In the presence of—
LOUIS B. SCOTT.
JOSEPH E. SNYDER.

STATE OF MISSOURI, } ss:
County of Jackson, }

Be it remembered that on this 6th day of March, 1860, before me, John J. Hough, clerk of the Kansas City court of common pleas for Kaw township, in the county and State aforesaid, personally appeared James Gladden, who is well known to me as the person whose name is subscribed to the foregoing instrument of writing, and acknowledged the same to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Kansas, on the day and date above written.

JOHN G. HOUGH, *Clerk,*
By LOUIS B. SCOTT, *D. C.* [L. S.]

Recorded Octcber 1st, A. D. 1860, at 5 p. m.
V. J. LANE,
Register of Deeds,
By JAMES A. CRUISE,
Deputy Register.

132 Defendant- next offered in evidence a certified copy of record of deed from David E. James and wife to Joseph E. Snyder of date July 27th, 1864.

Objected to by counsel for plaintiff- on the ground that the same is incompetent, irrelevant, and immaterial and does not cover land sued for; which objection is by the court overruled; to which ruling of the court the plaintiff- at the time excepted.

Said deed is in words and figures as follows, to wit:

This indenture made this 27th day of July, in the year of our Lord, one thousand eight hundred and sixty-four between David E. James and Jenny M. James, his wife of the first party, and Joseph E. Snyder, of the second part witnesseth:

That the said party of the first part for and in consideration of the sum of one dollar ($1.00) to it in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged have granted, bargained and sold, remised, released, aliened and confirmed unto the said party of the second part his heirs and assigns forever.

Commencing at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred four and one-half (3,604½) feet from the southeast corner of section number eleven (11), township eleven (11), range twenty-five (25) in the county of Wyandotte, State of Kansas; thence south sixty-one and one-half (61½) degrees west six hundred and forty (640) feet two (2) inches; thence south, twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east eight hundred and seventy-one (871) feet two (2) inches; thence along the southwest bank of the Missouri river, north twenty-eight and one-half (28½) degrees west three hundred (300) feet; thence south sixty-one and

one-half (61½) degrees west two hundred and thirty-one (231) feet to the place of beginning containing six (6) acres.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title and interest demand whatsoever of the said party of the first part either in law or equity of, in or to the above-bargained premises with the hereditaments and appurtenances;

To have and to hold the same premises as above described with the appurtenances unto the said party of the second part and to heirs and assigns forever.

In witness whereof, the party of the said first part have hereunto set hand and seal the day and year first above written.

D. E. JAMES. [L. S.]
JENNY M. JAMES. [L. S.]

Sealed and delivered in the presence of—
F. L. PARKER.
TRACY W. ROOT.

STATE OF MICHIGAN, } ss:
Washtenaw County, }

On the second day of August, A. D. 1864, before me, the subscriber, clerk of the circuit court of the county of Washtenaw aforesaid, personally appeared David E. James and Jenny M. James, to me personally known to be the identical persons described in and who executed the within conveyance, and acknowledged the instrument to be their own voluntary act and deed, and the said Jenny M. James, on an examination apart from her said husband, having been first made acquainted with the contents of such conveyance, acknowledged that she executed the same and relinquished her dower in the real estate therein mentioned freely and without any fear or compulsion of her said husband.

[SEAL.] TRACY W. ROOT, *Clerk.*

Recorded Oct. 23rd, A. D. 1868, at 9 a. m.

JAMES A. CRUISE,
Reg. of Deeds.

133 Defendants next offered in evidence the certified copy of the record in the partition suit, number 911, of Thomas Ewing, Jr., and others against William Weer, Thomas Swope, Silas Armstrong, David E. James, George B. Wood, Henry R. Seegar, The Union Pacific Railroad Company, Eastern Division, and others; which partition-suit record has already been introduced by the plaintiff- in evidence and is found on pages from number 36 to 75, inclusive, of this case.

Defendants next offered in evidence the deed of David E. James and wife to Joseph E. Snyder, dated April 13th, 1869, for four (4) acres of land and read the same in evidence, being the same deed

introduced by the plaintiffs herein and found at pages 76, 77, and 78 of this record.

Defendants next offered in evidence the bankrupt deed of Henry N. Ess, the assignee in bankruptcy of the estate of Joseph E. Snyder, to Byron Judd, of date October 20th, 1871.

Plaintiffs objected to the introduction of said deed in evidence for the reason that the same is incompetent, irrelevant, and immaterial and does not cover land sued for in this case.

Which objection was by the court overruled; to which ruling of the court the plaintiffs at the time duly excepted.

Said deed is in words and figures following, to wit:

Whereas, on the 2nd day of December, A. D. 1867, Joseph E. Snyder of Kansas City in the county of Jackson, in the State of Missouri, by order of the judge of the United States district court for the western district of Missouri was adjudged a bankrupt on his own petition, under and by virtue of an act of Congress entitled, "An act to establish a uniform system of bankruptcy throughout the United States" approved March 2nd 1867 and thereafter on the 2nd day of March, 1868, James H. Beaty as register in bankruptcy, for said district duly assigned "all the estate real and personal of the said Joseph E. Snyder, bankrupt aforesaid, including all the property of whatever kind, of which he is possessed or in which he was interested or entitled to have on the 2nd day of December, A. D. 1867," By his written assignment under his hand, and the seal of said court, to Samuel A. Vose as assignee of the estate of said Joseph E. Snyder bankrupt who has before that date been elected and appointed as such assignee by said court, and who had in all respects qualified as such assignee, by giving bond and taking the oath as required by said act of Congress, and entered upon his duties as such;

And whereas, thereafter, for good cause, moving to said court on its own motion, the said Samuel A. Vose, was discharged and removed from his said trust, as such assignee, and the court thereafter appointed Henry N. Ess, of Kansas City in the county of Jackson in State of Missouri as assignee of the estate of Joseph E. Snyder, bankrupt; and the said assignee duly qualified, in all respects as required by law and entered upon his duties as such assignee, pursuant to said appointment and in obedience to the orders of said court, and took possession of the real and personal property of said bankrupt:

And whereas, said Henry N. Ess as such assignee took possession of the following-described real estate situated in Wyandotte county, State of Kansas, as the property of said Joseph E. Snyder, bankrupt, described as follows, to wit:

Beginning at a point north twenty-eight and one-half (28½) degre-s west thirty-six hundred four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11) south, of range twenty-five (25) east, of the sixth (6th) principal meridian,
on the northwesterly line of James street extended as shown
134 by the plat of Kansas City, Kansas, on file in the register

of deeds office of said county of Wyandotte on page 9, of the Book of Plats, filed on the 3rd day of May A. D. 1869 by David E. James and others; thence south sixty-one and one-half (61½) degrees west six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet to the said northwesterly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west on said northwestwardly line of James street three hundred (300) feet to the beginning, containing four (4) acres more or less;

And also beginning at the same point as last above and thence north sixty-one and one-half (61½) degrees east to the Missouri river; thence down along said river south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the northwestwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west three hundred (300) feet to the beginning, containing two (2) acres more or less.

And whereas, the said Henry N. Ess, as such assignee was by the order of said court, made on the 14th day of June, A. D. 1871, ordered to "file a complete schedule of all property belonging to said bankrupt's estate undisposed of" and thereafter the said assignee returned as the property of said bankrupt, the above-described and foregoing parcels of real estate.

And whereas, by other and subsequent orders of said court the said assignee, was ordered and directed to cause said real estate to be duly appraised as in sales of real estate on the administration of the estates of deceased persons, and thereafter to report the same to said court, and to sell said real estate at private sale, and to report such sale to said court for further proceedings;

And whereas, in pursuance of and in obedience to such orders, the said Henry N. Ess as such assignee, caused said real estate to be appraised by three disinterested householders of said county, upon their oaths in writing, and returned said appraisal so made by said appraisers to the said court, and thereafter at the office of Karnes and Ess in Kansas City on the 30th day of September, A. D. 1871, offered the said real estate for sale, in parcels as above described at private sale, and sold the parcel first above described for thirty-three hundred and twenty dollars ($3,320.00) at the time and place aforesaid to Byron Judd of Wyandotte, county of Wyandotte, State of Kansas.

And the parcel second above described to said Byron Judd for eighteen hundred dollars ($1,800.00) and thereafter the said Byron Judd paid the said sum of fifty-one hundred and twenty dollars ($5,120.00) to the said Henry N. Ess as such assignee.

And in further obedience to the order of said court, the said Henry N. Ess made full and complete return and report of his said sale as aforesaid to the said court on the 12th day of October, A. D. 1871, and thereafter on the 14th day of October, A. D. 1871, the said

court approved said sale so reported, and further ordered the said Henry N. Ess to make a deed therefor to the purchaser aforesaid.

Now, know all men by these presents, that I Henry N. Ess as assignee of the estate of Joseph E. Snyder, bankrupt in bankruptcy, in consideration of the premises and of fifty-one hundred and twenty dollars ($5,120.00) to me in hand paid, and of the powers vested in me by law, have sold and by these presents, do grant, bargain, sell and convey to said Byron Judd all the right,
135 title and interest of the said Joseph E. Snyder, and all the right, title and interest of said assignee as such in and to the foregoing tracts and parcels of lands as above and fully described.

To have and to hold the same unto the said Byron Judd, his heirs and assigns as fully as the said Joseph E. Snyder was vested of the same and as fully as the same was vested in me as such assignee;

And I, the said Henry N. Ess, as such assignee, do hereby covenant and agree to warrant and defend said real estate against all persons claiming by, through or under me in my said trust.

In testimony whereof, I have hereunto set my hand and seal as assignee of the estate of Joseph E. Snyder, bankrupt, this 20th day of October, A. D. 1871.

HENRY N. ESS,
Assignee of the Bankrupt Estate of Joseph E. Snyder.

[SEAL.]

[U. S. revenue stamp.]

STATE OF KANSAS, *County of Wyandotte,* } *ss:*

On this 21st day of October, A. D. 1871, before me, a notary public in and for said county and State aforesaid, came Henry N. Ess, personally known to me to be the same person who executed the foregoing instrument of writing, and duly acknowledged the execution of the same as assignee of the estate of Joseph E. Snyder.

In testimony whereof I have hereunto set my hand and notarial seal.

A. B. BARTLETT,
Notary Public. [SEAL.]

[U. S. revenue stamp.]

STATE OF KANSAS, *Wyandotte County,* } *ss:*

Recorded October 27th, A. D. 1871, at 11 o'clock a. m., in Record Book "Q," at pages 189, 190, and 191.

JAMES A. CRUISE,
Register of Deeds.

Fees, $1.95.

136 Defendant- next offered in evidence a deed from Byron Judd and wife to Stephen A. Cobb and Allison B. Bartlett of date July 31st, A. D. 1872.

Objected to by plaintiffs because incompetent, irrelevant, and immaterial. Same does not cover the land sued for. The court overruled the objection of plaintiff-; to which ruling of the court the plaintiffs at the time excepted.

Said deed is in words and figures following, to wit:

This indenture made this thirty-first day of July, A. D. 1872 between Byron Judd and Maria Judd, his wife of the city of Wyandotte, Kansas, of the first part and Stephen A. Cobb and Allison B. Bartlett of the same place, of the second part; witnesseth:—

That the said parties of the first part for and in consideration of the sum of five hundred dollars to them duly paid, the receipt of which is hereby acknowledged, do by these presents, grant, bargain and sell, release and forever quitclaim unto said parties of the second part their heirs and assigns forever, all their right, title and interest in and to all the following-described lands and tenements situate in the county of Wyandotte and State of Kansas and described as follows:

Beginning at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25) east of the sixth (6th) principal meridian in Kansas on the northwestwardly line of James street extended as shown by the plat of Kansas City, Kansas, on file in the office of the register of deeds *office* for said county of Wyandotte on page 9, Book of Plats filed and recorded on the 3rd day of May, 1869 by D. E. James and others; thence south sixty-one and one-half (61½) degrees west six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet to the said northwestwardly line of said James street extended, thence north twenty-eight and one-half (28½) degrees west in said northwesterly line of said James street extended three hundred (300) feet to the beginning, containing four (4) acres more or less.;

Also beginning at the same point as above, thence north sixty-one and one-half (61½) degrees east to the Missouri river; thence down along said river south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the northwesterly line of James street aforesaid extended; thence north twenty-eight and one-half (28½) degrees west along said line of James street extended three hundred (300) feet to the place of beginning, containing two (2) acres more or less—together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining;—to have and to hold the said granted premises to the said parties of the second part and to their heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto subscribed their names the day and year first above written.

BYRON JUDD.
MARY LOUISE JUDD.

In presence of—
—— ——.

STATE OF KANSAS, }
County of Wyandotte. }

On the first day of August, A. D. 1872, before me, a notary public in and for said county, came Byron Judd and Mary Louise Judd, to me personally known to be the same persons who executed the foregoing instruments, and duly acknowledged the execution of the same.

137 In testimony whereof I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

[SEAL.] W. J. BUCHAN,
Notary Public.

Recorded September 3-th, A. D. 1872, at 9 a. m.

——— ———,
Register of Deeds.

Defendants next offered in evidence a quitclaim deed from A. B. and Sarah E. Bartlett, by E. L. Bartlett, their attorney-in-fact, and S. E. Cobb for herself and as administratrix of the estate of Stephen A. Cobb, deceased, to Nicholas McAlpine of date June 14th, 1879.

Plaintiffs objected to same because irrelevant and incompetent and because grantors had no title to land sued for, but court overruled the objection.

Which deed is in words and figures following, to wit:

138 *Quitclaim Deed.*

This indenture, made this fourteenth (14th) day of June A. D. 1879, between A. B. Bartlett and Sarah E. Bartlett, per Edward Bartlett, their attorney-in-fact, and Sarah E. Cobb, for herself and — administratrix of the estate of Stephen A. Cobb, deceased, of the first part and Nicholas McAlpine of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one dollar ($1.00) to them duly paid, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell and forever quitclaim, unto the said party of the second part to his heirs and assigns forever, all the following-described lands and tenements, situate in the county of Wyandotte, and State of Kansas, and described as follows, to wit: That part of what has been known as the Joseph E. Snyder tract of land located in Armstrong's Wyandotte reserve number one (1), in fractional sections ten (10) and eleven (11) south in range twenty-five (25) east—which lies west and south of a line which is six hundred and forty feet and two (2) inches

south, sixty-one (61) degrees thirty (30) minutes west from and parallel to a line running north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), south range twenty-five (25) east thirty-six hundred four and one-half (3,604½) feet to the northerly line of the D. E. James allotment number fifteen (15) in the partition case No. 911, on the docket of said court, wherein Thomas Ewing, Jr., *et al.* were plaintiffs and William Weer *et al.* were defendants, meaning hereby to convey all that portion of the lands described in a deed from Henry N. Ess, assignee in the bankrupt estate of Joseph E. Snyder to Byron Judd, dated October 20th, 1871, Record Book 2, page 189 of record of office of register of deeds of said county, which lies west and south of the lands described in a former deed from D. E. James to said Snyder, dated July 27th, 1864, recorded Book L, page 135 of said records.

Two (2) acres more or less, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining; to have and to hold said granted premises to the said party of the second part, and to his heirs and assigns forever.

In witness whereof the said party of the first part have hereunto subscribed their names the date and year above written.

A. B. BARTLETT,
By E. L. BARTLETT,
His Attorney-in-Fact.
SARAH E. BARTLETT,
By E. *G.* BARTLETT,
Her Attorney-in-Fact.
SOPHIA A. COBB,
For Herself.
SOPHIA COBB,
As Administratrix of Estate of S. A. Cobb, Deceased.

STATE OF KANSAS, } ss:
Wyandotte County, }

On this 16th day of June, A. D. 1879, before me, a notary public in and for said county, came Sophia A. Cobb for herself and as administratrix of the estate of S. A. Cobb, deceased, and E. L. Bartlett, as attorney-in-fact for A. B. Bartlett and Sarah E. Bartlett, to me personally known to be the same persons who executed the foregoing instrument, and acknowledged the execution of the same.

In testimony whereof I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

M. B. NEWMAN,
Notary Public. [SEAL.]

Entered on transfer record August 2nd, 1879.

D. E. EMMONS, *Clerk.*

STATE OF KANSAS, } ss:
County of Wyandotte, }

Received for record Aug. 2nd, 1879, at 11 and ¾ o'clock a. m., and duly recorded in Liber 6 of Deeds, on pages 270, 271.
Fees, $1.25, paid.

J. S. CLARK,
Reg. of Deeds.

Paid.
J. S. CLARK,
Register of Deeds.

139 Defendants next offered in evidence a power of attorney from A. B. Bartlett to Edward L. Bartlett, of date April 14th, 1876.

Mr. MASON: I offer this to show upon what authority the above deed was made.

Objected to by counsel for plaintiffs on the ground that the same is incompetent, irrelevant, and immaterial, and that A. B. Bartlett had no title to lands sued for; which objection is by the court overruled; to which ruling of the court the plaintiffs at the time duly excepted.

Said power of attorney is in words and figures following:

Know all men by these presents that I, Alison B. Bartlett, of the county of Wyandotte and State of Kansas, temporarily residing in Putnam county, State of Florida, have made, constituted, and appointed and do by these presents make, constitute, and appoint Edward L. Bartlett, of said county of Wyandotte, my true and lawful attorney for me and in my name and place to bargain and sell, convey, lease, or demise any and all my real estate in which I may have any interest in the said county of Wyandotte, Kansas, or in the counties of Grasan or Callahan, in the State of Texas, or in the county of Las Animas, in the Territory of Colorado; also to settle, by compromise or otherwise, all claims, demands, choses in action, or actions pending, and especially to settle and adjust my claim of assignee of Aaron and Fafre against the Masonic Mutual Benefit Society of Indianapolis, Indiana, and for the foregoing purposes I hereby authorize my said attorney to make, execute, and deliver in my name and for me all deeds, leases, releases, receipts, and discharges of record necessary to perfect the same, hereby ratifying and confirming all my said attorney may do in the premises.

In testimony whereof I have hereunto set my hand and seal this 14th day of April, 1876.

A. B. BARTLETT.

STATE OF FLORIDA, } ss:
Putnam County, }

On this 18th day of May, A. D. 1876, personally came before me, a justice of the peace in and for said county, Alison B. Bartlett, known to me to be the same person who executed the foregoing in-

strument of writing, and duly acknowledged the execution of the same.

LOREN WEBB,
Justice of the Peace.

STATE OF FLORIDA, } ss:
Putnam County, }

I, W. B. Snow, clerk of the circuit court in and for the county and the State aforesaid, do hereby certify that Loren Webb, whose genuine signature appears to the forgoing proof or acknowledgement, was at the time of signing the same a justice of the peace in and for the county and State aforesaid, duly qualified, and that all his official acts as such are entitled to full faith and credit.

In witness whereof I have hereunto set my hand and seal of said court this 20th day of May, A. D. 1876.

[SEAL.] W. C. SNOW, *Clerk.*

Recorded May 26th, A. D. 1876, at 11 a. m., volume Z, page 8.

140 Defendants next offered in evidence a power of attorney from Sarah E. Bartlett to Edward L. Bartlett, of date November 10th, 1877.

Mr. MASON: "I also offer this for the same reason as the other power of attorney just read."

Objected to by counsel for plaintiffs on same ground as former power of — objected to; which objection is by the court overruled; to which ruling of the court the plaintiffs at the time excepted.

Said power of attorney is in words and figures following, to wit:

Know all men by these presents that I, Sarah E. Bartlett, of the county of Wyandotte and State of Kansas, have made, constituted, and appointed and by these presents do hereby make, constitute, and appoint Edward S. Bartlett, of the same county and State, my true and lawful attorney for me and in my name and stead to bargain, sell, convey, lease, release, or demise any or all of my real estate belonging to myself or jointly with my husband, A. B. Bartlett, or any other person, or in which I may have any interest, situated in the county of Wyandotte, Kansas, or in the State of Missouri, or within the States of Texas or Colorado, or whereever else situated or located; and, further, I authorize him to settle, *or* compromise or otherwise, any and all claims, demands, choses in action, or actions now pending as to him may — best and proper, and for the purpose of carrying out the foregoing power I hereby authorize and empower my said attorney to make, execute, and deliver in my name and for me all deeds, leases, releases, receipts, and discharges of record necessary to carry the same into effect and perfect the same as fully as I myself could do were I personally present, hereby ratifying and confirming all my said attorney may do in the premises.

In testimony whereof I have hereunto subscribed my name this 10th day of November, A. D. 1877, and affixed my seal.

[SEAL.] SARAH E. BARTLETT.

STATE OF KANSAS, } ss:
County of Wyandotte, }

On this 10th day of November, A. D. 1887, before me, a clerk of the 10th district court in and for said county and State, came Sarah E. Bartlett, personally known to me to be the same person who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

In testimony whereof I have hereunto subscribed my name and affixed the seal of — this 10th day of November, A. D. 1877.

[SEAL.] G. W. BETTS,
Clerk of the 10th District Court for Wyandotte County, Kansas.

Recorded April 27th, A. D. 1878, at 3¼ o'clock, Book 3, page 4.

141 Defendants next offered in evidence the guardian's deed by Sophia A. Cobb as guardian of Stephen A. Cobb, Jr., of date June 21st, 1882.

Objected to by plaintiffs because of being incompetent, irrelevant, and immaterial, and for the further reason that it was made after this suit was brought; which objections were by the court overruled; to which ruling of the court the plaintiffs at the time excepted.

Said deed is in words and figures following, to wit:

Deed, Guardian's.

This indenture, made this 21st day of June A. D. 1882 between Sophia A. Cobb guardian of Stephen A. Cobb, minor heir of Stephen A. Cobb, of Wyandotte county and State of Kansas, deceased, of the first part, and Nicholas McAlpine of Wyandotte county in the State of Kansas, party of the second part, witnesseth: That said party of the first part in virtue of an order of sale issued out of the probate court of Wyandotte county, in the State of Kansas, and dated the 19th day of June, A. D. 1882, — the real property hereinafter described has been sold in conformity with said order and sale thereof confirmed, as required by law and in conformity with the provisions of the act of the legislature of the State of Kansas, entitled, "An act respecting executors and administrators, and the settlement of the estates of deceased persons, approved February 28th, 1868," and in consideration of the sum of fifty dollars ($50.00) the same being more than three-fourths (¾) of the appraised value of said real-estate property the receipt of which is hereby acknowledged, does by these presents, grant bargain, sell and quitclaim unto the said party of the second part, his heirs and assigns forever, all the right, title and interest of said minor in and to all the following-described real estate situated in the county of Wyandotte, and State of Kansas, to wit:

His interest in a tract of land, known as the Joseph E. Snyder tract, located in Armstrong's Wyandotte reserve number one (1), in sections ten (10) and eleven (11), south range twenty-five (25) east which lies west and south *f*of a line which is six hundred and forty

and two-twelfths ($640\frac{2}{12}$) feet south sixty-one and one-half ($61\frac{1}{2}$) degrees west from and parallel to a line running north twenty-eight and one-half ($28\frac{1}{2}$) degrees west from the northeast corner of section eleven (11), township eleven (11), range twenty-five (25) east thirty-six hundred four and a half ($3,604\frac{1}{2}$) feet to the northerly line of D. E. James allotment number 15, in the partition suit No. 911 in the docket of said court, wherein Thomas Ewing Jr. *et al.* were plaintiffs and William Weer *et al.* were defendants.

Meaning to convey all that portion of the land described in a deed from Henry N. Ess assignee of the bankrupt estate of Joseph E. Snyder to Byron Judd, dated October 20th, 1871, recorded in Book 2, page 189 of recorder's office of register of deeds in said county, which lies west and south of the land described in a former deed from D. E. James to said Snyder dated July 27th, 1864 recorded in Book L, page 135 of said records, containing two (2) acres more or less.

To have and to hold the same, and the above premises, together with the appurtenances and every part thereof, unto said party of the second part his heirs and assigns forever, and the said party of the first part does hereby covenant and agree with the said party of the second part, his heirs and assigns, that he has in all things observed the requirements of law, and of all orders in and concerning said sale.

In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

SOPHIA A. COBB, *Guardian.* [SEAL.]

142 STATE OF KANSAS, } *ss:*
Wyandotte County, }

Be it remembered that on this 21st day of June, A. D. 1882, before me, the undersigned, a notary public in and for said county and State, came Sophia A. Cobb, guardian of the person and estate of Stephen A. Cobb, Jr., minor heir of Stephen A. Cobb, deceased, who is personally known to me to be the same person who executed the within instrument of writing, and such person duly acknowledged the execution of the same.

[SEAL.] R. E. CABLE,
Probate Judge.

The within deed approved by me this 21st day of June, A. D. 1882.

[SEAL.] R. E. CABLE,
Probate Judge.

STATE OF KANSAS, } *ss:*
Wyandotte County, }

This instrument was filed for record in Book 19, page 93 & 94, the 24th day of June, A. D. 1882, and 2 o'clock p. m., and duly recorded.

W. B. BRIDGENS,
Register of Deeds,
By LIBBIE C. HUGHES, *Deputy.*

143 Defendants next offered in evidence a quitclaim deed from Alfred H. Cobb to Nicholas McAlpine of the same date, to wit, June 21st, 1882.

Objected to by plaintiffs for the reason that the same is incompetent, irrelevant, and immaterial, and because made after this suit was commenced; which objection is by the court overruled; to which ruling of the court the plaintiffs at the time except.

Deed—Quitclaim.

This indenture made this 21st day of June A. D. 1882, between Corrie L. Cobb and Alfred H. Cobb, of Wyandotte county, and State of Kansas of the first part, and Nicholas McAlpine, of Wyandotte county and State of Kansas of the second part, witnesseth:

That the said parties of the first part in consideration of the sum of one dollar ($1.00) the receipt of which is hereby acknowledged does by these presents remise, release, and quitclaim unto the said party of the second part his heirs and assigns all the following-described real estate situated in the county of Wyandotte and State of Kansas, to wit:

My interest in a certain tract of land known as the Joseph E. Snyder tract located in Armstrong's reserve number 1, in section ten (10) and eleven (11), south range twenty-five (25) east which lies west and south of a line which is six hundred and forty and one-half (640½) feet south sixty-one degrees (61) and thirty (30) minutes west from and parallel to a line running north twenty-eight and one-half (28½) degrees west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25) east, thirty-six hundred four and one-half (3,604½) feet to the northerly line of the D. E. James allotment number 15 in the partition suit number 911, in the district court in the docket of said court, wherein Thomas Ewing Jr. *et al.* were plaintiffs and William Weer *et al.* were defendants.

Meaning to convey thereby all that portion of land described in a deed from Henry N. Ess, assignee of the bankrupt estate of Joseph E. Snyder to Byron Judd dated October 20th 1881 recorded Book 2 page 189 of recorder's office of the register of deeds of said county. Which lies west and south of the land described in a former deed from David E. James to said Snyder dated July 27th, 1864. Recorded in Book L, page 135, of said records containing two (2) acres more or less.

To have and to hold the same together with all and singular the tenements and hereditaments and appurtenances thereunto belonging or in anywise appertaining forever.

In witness whereof, the said parties of the first part have hereunto set their hands, the day and year first above written.

ALFRED H. COBB.

Executed in the presence of—

CORRIE L. COBB.

B. N. CAMPBELL.

STATE OF KANSAS, } ss:
Wyandotte County, }

Be it remembered that on this 21st day of June, A. D. 1882, before me, the undersigned, a notary public in and for said county and State aforesaid, came Corrie L. Cobb, Alfred H. Cobb, who are personally known to me to be the same persons who executed the within instrument of writing, and such person- have duly acknowledged the execution of the same.

In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My commission expires April 21st, 1883.

HENRY McGREW,
Notary Public. [SEAL.]

144 I hereby certify that the within deed was filed for record on the 24th day of June, A. D. 1882, at 2.15 o'clock p. m., and duly recorded in Book 19, on page- 95, 96. Fees, $1.00; paid.

W. H. BRIDGENS,
Register of Deeds,
By L. C. HUGHES, *Deputy.*

Defendants next offered in evidence a tax deed of date October 18th, 1875, recorded January 10th, 1879, to J. C. Douglass.

Plaintiffs objected to the introduction of said deed on the ground that the same is void on its face and incompetent, irrelevant, and immaterial, and not good on its face, and also because it does not describe the land in controversy and is full of other irregularities, and because none of defendants acquired any right under it till after this suit was commenced; which objections were by the court overruled, and to which ruling of the court the plaintiffs at the time excepted.

Said tax deed is in words and figures following, to wit:

Know all men by these presents: That whereas, the following-described real property viz: Five (5) acres out of the following-described tract viz: Beginning north twenty-eight and one-half (28½) degrees west twenty-five hundred seventeen and three-fourths (2,517¾) feet from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25); thence south sixty-one and one-half (61½) degrees west fourteen hundred and seventeen (1,417) feet to the east bank of the Kansas river, down same north forty-two and three-fourths (42¾) west two hundred eighty-two (282) feet twenty-six and three-fourths (26¾) west, six hundred (600) feet, north nine and three-fourths (9¾) west one hundred and nine (109) feet north 13½ east 86 ft. north 31¼ degrees east 91 feet north 61¼ east 152 feet to the west bank of the Missouri river, down same south twenty-seven and three-fourths (27¾) degrees east three hundred ninety-three and one-half (393½) feet south, forty-three and one-half (43½) degrees east four hundred and thirty-five (435) feet south, forty-six and one-fourth (46¼) degrees west two hundred and eighty-seven (–87) feet south sixty-one and one-half (61½), four hun-

dred twenty-five and one-half (425½) feet to beginning, containing thirty-eight (38) acres—five (5) acres said land assessed in name of and as belonging to Jos. E. Snyder, excepting two (2) acres off of the easterly end of said land fronting on the Missouri river redeemed February 8th, 1873, by the Hannibal and St. Joe Railroad Company, situated in Wyandotte county, and State of Kansas, was subject to taxation for the year A. D. 1868.

And whereas, the taxes assessed upon said real estate for the year 1868 aforesaid remained due and unpaid at the date of the sale hereinafter mentioned.

And whereas, the treasurer of the said county did on the fourth (4th) Monday of June A. D. 1869 it being the 28th day of said month by virtue of the authority in him vested by law having unavoidably omitted or failed to sell said land for said unpaid taxes at the sale begun and publicly held on the first Tuesday of May A. D. 1869, expose to public sale at the county-seat of said county, in substantial conformity with all the requirements of the statute in such cases made and provided, the real property above described, for the payment of taxes, interest and costs then due and unpaid on said property;

And whereas, at the time and place aforesaid, the real property above described could not be sold for the amount of said taxes, penalty and charges thereon to any person or persons, in any parcel or parcels at said public sale or any adjourned sale thereof, the said lands above described were bid off by N. McAlpine, county treasurer of Wyandotte county, State of Kansas, for the sum of
145 thirty-nine dollars and eighty-five cents ($39.85) being the whole amount of taxes, interest and costs then due and remaining unpaid on said real property for said county of Wyandotte in the State of Kansas;

And whereas Patrick K. Kelley, county clerk of said Wyandotte county, State of Kansas, did on the 30th day of April, A. D. 1870, in consideration of the sum of forty-eight dollars and twenty-five cents ($48.25) taxes, interest, and costs due on said land for the year 1868, paid by J. C. Douglass to N. McAlpine, treasurer of the county of Wyandotte and State of Kansas, duly assign the certificate of sale of the property aforesaid and all the right, title, and interest of the said Wyandotte county to said property to J. C. Douglass.

And whereas three (3) years have elapsed since the date of said sale and three (3) acres of the said property has not been redeemed therefrom as provided by law; now, therefore, I, A. B. Hovey, county clerk of the county aforesaid, for and in consideration of the sum of twenty-eight dollars and ninety-five cents ($28.95), costs, taxes, and interest due on said lands for the year 1868, to the treasurer paid as aforesaid, and by virtue of the statute in such cases made and provided have granted, bargained, and sold and by these presents do grant, bargain, and sell unto the said J. C. Douglass, his heirs and assigns the property last hereinbefore described to have and to hold the same unto him, the said J. C. Douglass, his heirs and assigns forever, subject, however, to all rights of redemption provided by law.

In witness whereof, I, A. B. Hovey, county clerk as aforesaid, by virtue of the authority aforesaid have hereunto subscribed my name and affixed the official seal of said county on this 18th day of October, 1875.

[SEAL.] A. B. HOVEY,
County Clerk.

G. W. BISHOP, *Witness.*

STATE OF KANSAS, }
Wyandotte County, } *ss:*

I hereby certify that before me, Edward L. Bartlett, a notary public within and for said county, personally appeared the above-named A. B. Hovey, clerk of said county, personally known to me to be the clerk of said county at the date of the execution of the above conveyance as clerk of said county, and who acknowledged the execution of the same to be his voluntary act and deed as clerk of said county for the purposes therein named.

Witness my hand and notarial seal this 18th day of October, A. D. 1875.

[SEAL.] EDWARD L. BARTLETT,
Notary Public.

Advertising fee for deed, .25; county clerk's fee for deed, $1.00; total, $1.25.

A. B. HOVEY,
County Clerk.

Received for record January 10th, 10½ o'clock a. m., 1879, and recorded in vol. 4 at pages 354, 355.

J. S. CLARK,
Register of Deeds, Wyandotte County.

Fees, $1.25.

146 Defendants next offered in evidence a tax deed of date October 18th, 1875, recorded January 10th, 1879, to C. I. Richards.

Plaintiffs objected to the introduction of said deed on the ground that *that* the same is incompetent, irrelevant, and immaterial and not good on its face, and also because it does not describe the land in controversy and is full of other irregularities; which objection was by the court overruled, and to which ruling of the court the plaintiffs at the time excepted.

Said tax deed is in words and figures following, to wit:

Tax Sale Deed.

Know all men by these presents, that whereas the following-described real property, viz: Commencing at northwest corner of tract conveyed to J. F. Joy by D. E. James S. twenty-eight (28) degrees ten (10) minutes east, three hundred (300) feet, sixty-two (62) degrees ten (10) minutes west five hundred eighty (580) feet;

north twenty-eight (28) ten (10) minutes west three hundred (300) feet north sixty-two (62) degrees ten (10) minutes east, five hundred eighty (580) feet to beginning four (4) acres. Said land assessed in the name of and as belonging to Jos. E. Snyder excepting two (2) acres off of the easterly end fronting on the Missouri river, redeemed February 8th, 1873, by the Hannibal and St. Joseph Railroad Company situated in the county of Wyandotte and State of Kansas, was subject to taxation for the year A. D. 1869;

And whereas, the taxes assessed upon said real property for the year A. D. 1869 aforesaid remained due and unpaid at the date of the sale hereinafter mentioned;

And whereas, the treasurer of said county did on the 4th day of May, A. D. 1870, expose to public sale at the county-seat of said county, in substantial conformity with all the requirements of the statute in such case made and provided; the real property above described for the payment of taxes, interest and costs, then due and unpaid upon said property;

And whereas, at the place aforesaid, C. I. Richards of the county of Leavenworth and State of Kansas, having offered to pay the sum of thirty-three dollars and sixty-nine cents (33.69) being the whole amount of the taxes, interest and costs due then and remaining unpaid on said property for four acres described as follows, viz: Commencing at the northwest corner of tract conveyed to J. F. Joy by D. E. James south twenty-eight (28) degrees and ten (10) minutes east three hundred (300) feet south sixty-two (62) degrees ten (10) minutes west five hundred and eighty (580) feet north 28 degrees 10 min. west 300 feet, north 62 degrees 10 min. east 580 feet to beginning, excepting two (2) acres off of the easterly end fronting on the Missouri river redeemed February 8th, 1873, by the Hannibal and St. Joseph Railroad Company, which was the least quantity bid for and payment of said sum having been made by him to the said treasurer, the said property was stricken off to him at that price;

And whereas, the subsequent taxes for the years 1870 and 1871 amounting to the sum of one hundred and fifty-four dollars and twenty cents ($154.20) have been paid by the purchaser as provided by law;

And whereas, three (3) years have elapsed since the date of said sale and two (2) acres of said property has not been redeemed therefrom as provided by law,

Now, therefore, I, A. B. Hovey, county clerk for the county aforesaid, for and in consideration of the sum of ninety-three dollars and ninety-four and one-half cents ($93.94½) taxes, costs and interest due on said lands for the years 1869, 1870, and 1871 to the treasurer paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said C. I Richards his heirs and assigns the real property last hereinbefore described, to have
147 and to hold unto him the said C. I. Richards his heirs and assigns forever, subject however to all rights of redemption provided by law.

In witness whereof, I, A. B. Hovey, county clerk aforesaid, by virtue of the authority aforesaid have hereunto subscribed my name and affixed the official seal of said county this 18th day of October, 1875.

[SEAL.] A. B. HOVEY,
County Clerk.

G. W. BISHOP, *Witness.*

STATE OF KANSAS, }
Wyandotte County, } *ss:*

I hereby certify that before me, Edward L. Bartlett, a notary public in and for said county and State, personally appeared the above-named A. B. Hovey, clerk of said county, personally known to me to be the clerk of said county at the date of the execution of the above conveyance and to be the identical person whose name is affixed to and who executed the above conveyance as clerk of said county, and who acknowledged the execution of the same to be his voluntary act and deed as clerk of said county for the purpose therein expressed.

Witness my hand and notarial seal this 18th day of October, A. D. 1875.

[SEAL.] EDWARD L. BARTLETT,
Notary Public.

Advertising fee for deed	25
County clerk's fee for deed	$1 00
Total	$1 25

A. B. HOVEY,
County Clerk.

Received for record January 10th, A. D. 1879, at 10.25 o'clock a. m., and recorded in vol. 4, pages 352, 353, and 354.

J. S. CLARK,
Register of Deeds, Wyandotte County, Kansas.

Fees, $1.25.

148 Defendants next offered in evidence a power of attorney from Charles I. Richards and wife to John C. Douglass, of date October 1st, 1872.

Objected to by plaintiff- for the reason that the same is incompetent, irelevant, and immaterial; which objection is by the court overruled, and to which ruling of the court the plaintiffs at the time duly excepted.

Said power of attorney is in words and figures as follows:

Know all men by these presents that we, Charles I. Richards and Harriet S. Richards, his wife, of Leavenworth county, State of Kansas, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, John C. Douglass, of said county and State, our true and lawful attorney for us and in our stead, names,

place, and stead to bargain, sell, convey, and quitclaim all our land and each parcel thereof, whether now held, owned by us, or hereafter purchased or acquired by us — either of us in the counties of Brown and Jackson, in the State of Kansas, and to execute and deliver quitclaim deeds to the purchasers thereof.

Also and in like manner sell and convey by quitclaim deeds all our lands and any of them now owned by us or either of us or hereafter acquired by either of us in all or any one of the following counties in said State of Kansas, to wit, Miami, Wyandotte, Leavenworth, Jefferson, Shawnee, Davis, Dickinson, and Pottawatomie counties, giving and granting unto said attorney full power and authority to do and perform all and every act or thing whatsoever requisite and necessary to be done in the above premises so fully to all intents and purposes as we might or could do if personally present, with full power of ratification and revocation, hereby ratifying and confirming all that our said attorney shall lawfully do or cause to be done by virtue thereof.

In witness whereof we have hereunto set our hands and seals the first day of October, in the year of our Lord one thousand eight hundred and seventy-two.

CHARLES I. RICHARDS.
HARRIET S. RICHARDS.

Sealed and delivered in the presence of—

——— ———.

STATE OF KANSAS, *Leavenworth County,* } ss:

Be it remembered that on this 1st day of October, A. D. eighteen hundred and seventy-two, before me, the undersigned, a justice of the peace in and for the county and State aforesaid, came Charles I. Richards and Harriet S. Richards, his wife, who are personally known to me to be the identical persons whose names are affixed to the foregoing power of attorney and to be the same persons who executed the same, and severally acknowledged the same to be their voluntary act and deed and acknowledged the execution.

In witness whereof I have hereunto set my hand the day and year last above written.

JOHN C. GOULD, *J. P.*

Recorded January 1st, 1880, at 1 o'clock p. m.

J. S. CLARK,
Register of Deeds,
By S. E. CLARK, *Deputy.*

Record, 7, 373.

Defendants next offered in evidence a quitclaim deed from Charles I. Richards and H. S. Richards, his wife, by John C. Douglass, their attorney-in-fact, to Nicholas McAlpine, of date July 29th, 1879.

Objected to by plaintiffs for the reason that the same was made

after the suit was commenced, and it does not convey any
149 title to the land sued for and is incompetent, irrelevant, and immaterial; which objection is by the court overruled; to which ruling of the court the plaintiff at the time duly excepted.

Said deed is in words and figures as follows, to wit:

Deed—Quit Claim.

This indenture made this 29th day of July in the year of our Lord one thousand eight hundred and seventy-nine between Charles I. Richards and H. S. Richards, his wife, by their attorney-in-fact, John C. Douglass, parties of the first part; and Nicholas McAlpine of the county of Wyandotte, and State of Kansas, party of the second part, witnesseth:

That the said parties of the first part, in consideration of the sum of three hundred dollars ($300.00) to them in hand paid, have sold and by these presents do remise, release and quitclaim unto the said party of the second part, his heirs and assigns forever, all that tract or parcel of land situated in the county of Wyandotte and State of Kansas and described as follows to wit: Situated in allotment number 15, assigned to David E. James in the partition case No. 911 Ewing *et al. versus* Weer *et al.* on docket of district court of said county.

Four (4) acres of land described as follows, to wit:

Commencing at the northwest corner of the tract of land conveyed to J. F. Joy by E. D. James thence south twenty-eight (28) degrees and —(10) minutes east three hundred (300) feet; thence south sixty-two (62) degrees ten (10) minutes west five hundred and eighty (580) feet; thence north twenty-eight (28) degrees ten (10) minutes west three hundred (300) feet; thence north sixty-two (62) degrees ten (10) minutes east five hundred and eighty (580) feet to the place of beginning, excepting two (2) acres thereof off of the easterly end fronting on the Missouri river, with the appurtenances and all the estate, title and interest of the parties of the first part herein. To have and to hold all and singular the above-described premises, together with the appurtenances, unto the said party of the second part his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CHARLES I. RICHARDS AND [SEAL.]
HARRIET S. RICHARDS. [SEAL.]

By their several attorney-in-fact—

JOHN C. DOUGLASS. [SEAL.]

STATE OF KANSAS, } ss:
County of Leavenworth, }

Be it remembered that on this 29th day of July, A. D. 1879, before me, the undersigned, a notary public in and for the county of —and State aforesaid, came John C. Douglass, as the attorney-in-fact of said Charles I. Richards and H. S. Richards, his wife, and who is per-

sonally known to me to be the same person who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

[SEAL.] N. H. WOOD,
Notary Public.

STATE OF KANSAS, *Wyandotte County,* } ss:

This instrument was filed for record on the 16th day of December, A. D. 1880, at 11 o'clock a. m., and duly recorded in Book 11 of 130 Records, at page —.

J. S. CLARK,
Register of Deeds.
S. E. CLARK, *Deputy.*

Fee paid.

150 Defendants next offered in evidence a quitclaim deed from John C. Douglass and Ellen R. Douglass, his wife, to Nicholas McAlpine, of the same date as above deed (July 29th, 1879).

Objected to by plaintiffs for the reason that the same is incompetent, irrelevant, and immaterial; was made after this suit was commenced; which objection is by the court overruled; to which ruling of the court the plaintiffs at the time duly excepted.

Said deed is in words and figures as follows, to wit:

Quitclaim Deed.

This indenture made this 29th day of July A. D. in the year of our Lord one thousand eight hundred and seventy-nine between John C. Douglass and Ellen R. Douglass, his wife, of the county of Leavenworth, State of Kansas parties of the first part, and Nicholas McAlpine of the county of Wyandotte, and State of Kansas, of the second part, witnesseth:—

That the said parties of the first part in consideration of the sum of two hundred dollars ($200.00) to them duly paid, have, and by these presents do remise, release and quitclaim unto the said party of the second part his heirs and assigns forever, all that tract or parcel of land situate in the county of Wyandotte, and State of Kansas, and described as follows, to wit:

Situated in allotment number 15 assigned to David E. James in the partition suit number 911 Ewing *et al. versus* Weer *et al.*, on the docket of the district court of said county, five (5) acres out of the following-described tract of land viz:—

Beginning north twenty-eight and one-half (28½) degrees west twenty-five hundred and seventeen and three-fourths (2,517¾) feet from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25); thence south sixty-one and one-half (61½) degrees west fourteen hundred and seventeen (1,417) feet to the east bank of the Kansas river; thence down the same north forty-

two and three-fourths (42¾) degrees west two hundred and eighty-two (282) feet; thence north twenty-six and three-fourths (26¾) degrees west six hundred (600) feet; thence north nine and three-fourths (9¾) — west one hundred and *and* nine (109) feet; thence north thirteen and one-half (13½) degrees east eighty-six (86) feet; thence north thirty-one and one-fourth (31¼) degrees east ninety-one (91) feet; thence sixty-one and one-half (62½) degrees east one hundred and fifty-two (152) feet to the west bank of the Missouri river; thence down the same south twenty-seven and three-fourths (27¾) degrees east three hundred and ninety-three and one-fourth (393¼) feet; thence south forty-three and one-half (43½) degrees east four hundred and thirty-five (435) feet; thence south forty-six and one-fourth (46¼) degrees west two hundred and eighty-seven (287) feet; thence sixty-one and one-half (61½) degrees west four hundred and twenty-five and one-half (425½) feet to the beginning, containing thirty-eight (38) acres—five (5) acres of said land assessed in the name of and as belonging to Jos. E. Snyder, excepting two (2) acres thereof off of the easterly end of said land fronting on the Missouri river redeemed from taxes February 8th, 1873 by the Hannibal and St. Joe Railroad Company.

With the appurtenances and all the estate, title and interest of the said parties of the first part therein.

To have and to hold, all and singular the above-described premises together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands the day and year first above written.

JOHN C. DOUGLASS. [SEAL.]
ELLEN R. DOUGLASS. [SEAL.]

151 STATE OF KANSAS, } ss:
County of Leavenworth, }

Be it remembered that on this 29th day of July, A. D. 1879, before me, the undersigned, a notary public within and for said county and State aforesaid, came John C. Douglass and Ellen R. Douglass, his wife, who are personally known to me to be the same persons who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written.

N. H. WOOD, [SEAL.]
Notary Public.

Recorded in Book 111, page 131, December 15th, 1880.

Defendants next offered in evidence a transcript from the records of the bankruptcy court for the western district of Missouri, duly certified by the clerk of said court.

Plaintiffs objected to the introduction of this for the reason that the same is incompetent, irrelevant, and immaterial and no title is acquired under same to land sued for, which land Joseph E.

Snyder acquired after he was adjudicated bankrupt; which objection is by the court overruled; to which ruling of the court the plaintiffs at the time excepted.

Said record is in words and figures as follows, to wit:

This indenture made this 27th day of July in the year of our Lord one thousand eight hundred and sixty-four, between David E. James and Jenny M. James, his wife, of the first part, and Jos. E. Snyder of the second part, witnesseth:

That the said party of the first part for and in consideration of the sum of one dollar ($1.00) to us in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged have granted, bargained and sold, remised, released, alienated and confirmed and by these presents do grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part heirs and assigns forever:

Commencing at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred four and one-half (3,604½) feet from the southeast corner of section number eleven (11), township eleven (11) range twenty-five (25) in the county of Wyandotte, State of Kansas, thence south sixty-one and one-half (61½) degrees west six hundred and forty (640) feet and two (2) inches; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east eight hundred and seventy-one (871) feet, and two (2) inches; and thence along the southwest bank of the Missouri river north twenty-eight and one-half (28½) degrees west three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the place of beginning, containing six (6) acres together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder, remainders, rents, issues, profits thereof, and all the estate, right, title and interest or demand whatsoever of the said party of the first part either in law or in equity of, in and to the above-bargained premises with the hereditaments and appurtenances.

To have and to hold the same and said premises as above described with the appurtenances thereunto belonging unto the said part- of the second part and to heirs and assigns forever.

In witness whereof, the party of the first part have hereunto set their hand- and seal- the day and year first above written.

D. E. JAMES. [L. S.]
JENNIE M. JAMES. [L. S.]

Sealed and delivered in presence of—
F. L. PARKER.
TRACY W. ROOT.

152 STATE OF MICHIGAN, } ss:
Washtenaw County, }

On this 2nd day of August, A. D. 1864, before me, the subscribed, clerk of the circuit court for the county of Washtenaw aforesaid,

personally appeared David E. James and Jenny M. James, to me personally known to be the identical persons named and described in and who executed the within conveyance, and acknowledged the instrument to be their own and voluntary act and deed; and the said Jennie M. James, on an examination apart from her husband, having been first made acquainted with the contents of such conveyance, acknowledged that she executed the same and relinquished her dower in the real estate therein mentioned freely and without any fear or compulsion on the part of her said husband.

[SEAL.] TRACY W. ROOT, *Clerk.*

[U. S. revenue stamp.]

Recorded October 23, A. D. 1886, at 9 a. m.

JAMES A. CRUISE,
Register of Deeds.

STATE OF KANSAS, } ss:
Wyandotte County, }

I, James A. Cruise, register of deeds of said county, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain instrument of writing recorded in my office and of the certificate aforesaid thereof.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Wyandotte, this the 5th day of February, A. D. 1870.

JAMES A. CRUISE,
Register of Deeds.

[SEAL.]

[U. S. revenue stamp.]

Warranty Deed.

[U. S. revenue stamp.]

This indenture made this 13th day of April, in the year of our Lord one thousand and eight hundred and sixty-nine, between David E. James and Jennie M. James, his wife, of the first part, and Joseph E. Snyder party of the second part:

Witnesseth: That the said party of the first part in consideration of the sum of one dollar ($1.00) to them duly paid *has* sold and by these presents do grant, and convey to the said party of the second part his heirs and assigns, all that tract or parcel of land situated in the county of Wyandotte, and State of Kansas, and described as follows, to wit:

Variation eleven (11) degrees east—beginning at the southwest corner of a tract of land conveyed by said James to one James F. Joy and now known as railroad land, said southwest corner being the northwest corner of a certain parcel of land now owned by said James; thence running south sixty-one (61) degrees fifty (50) minutes west, five hundred and eighty and eight-tenths (580.8) feet; thence south twenty-eight (28) degrees and ten (10) minutes *three* east three hundred (300) feet; thence north sixty-one (61) degrees and fifty (50) minutes east five hundred and eighty and eight-tenths (580.8) feet; thence north twenty-eight (28) degrees and ten

(10) minutes west three hundred (300) feet to place of beginning and all to contain four (4) acres, said land being — township eleven (11), range twenty-five (25) in the above-mentioned county and State.

This conveyance is made subject to the payment of a mortgage of fifty dollars ($50.00) per acre given to Silas Armstrong by said James; also, subject to the payment of twenty-five dollars ($25.00) due to C. F. Welland on or before May 12th, 1869, with interest at ten (10) per cent. per annum; also taxes due now upon above-de-
153 scribed land amounting to seventeen dollars and fifty cents ($17.50) more or less with the appurtenances and all the estate, title and interest of the said party of the first part therein.

And the said David E. James and Jennie M. James, his wife, do hereby covenant and agreee that at the delivery hereof they are the lawful owners of the above premises granted and seized of a good and indefeasible estate of inheritance therein, and that they will warrant and defend the same in the quiet and peaceable possession of the said party of the second part, his heirs and assigns forever.

In witness whereof the said party of the first part *has* hereunto set their hand- and seal- the day and year above written.

D. E. JAMES. [SEAL.]
JENNIE M. JAMES. [SEAL.]

Executed and delivered in the presence of—
GEORGE B. WOOD.
E. B. POND,
For Mrs. James.
R. R. PORTER.

STATE OF KANSAS, } ss:
County of Wyandotte, }

On this 13th day of April, A. D. 1869, before me, a notary public in and for said county, came David E. James, to me personally known to be the same person who executed the foregoing instrument, and duly acknowledged the execution of the same.

In testimony whereof I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

All interlineations made before signing.

[SEAL.] M. B. NEWMAN,
Notary Public.

STATE OF MICHIGAN, } ss:
County of Washtenaw, }

On this 17th day of April, A. D. 1879, before me, the county clerk in and for said county, came Jennie M. James, to me known personally to be the same person who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

In testimony whereof I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

All interlineations made before signing.

[SEAL.] JOHN J. ROBSON, *Clerk.*

[U. S. revenue stamp.]

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STATE OF KANSAS, } ss:
County of Wyandotte, }

I, Jas. A. Cruise, register of deeds of said county, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain instrument of writing this day filed in my office for record, together with endorsement thereon.

In testimony whereof I have hereunto set my hand and affixed my official seal, at the city of Wyandotte, this the 5th day of February, A. D. 1870.

[SEAL.] JAMES A. CRUISE,
Register of Deeds.

[U. S. revenue stamp.]

154 UNITED STATES OF AMERICA, } ss:
Western District of Missouri, Eastern Division, }

I, Louis Schmidt, clerk of the district court of the United States for the western district of Missouri, hereby certify that the writing hereto annexed is a true copy of a copy of a deed from David E. James and Jennie M. James to Joe E. Snyder, dated the 27th day of July, A. D. 1864, and of a copy of a certain other deed from the said David E. James and Jennie M. James to Joseph E. Snyder, of date April 13th, 1869, and I further certify that the dates of filing of said copies of deeds in this office is not endorsed thereon, but that the same have remained on file among the papers in the matter of the bankruptcy of the said Joseph E. Snyder during all the term of office of said clerk of said court, to wit, since November, A. D. 1875, and that they were filed in said office previous to his entering upon the duties of said office of clerk on the said November, 1875, as fully as the same remains on file and of record in said case in this office.

In witness whereof I hereto subscribe my name and affix the seal of said court, at office, in the city of Jefferson, in said district, this seventh day of February, A. D. 1881.

[SEAL.] LOUIS SCHMIDT, *Clerk.*

UNITED STATES OF AMERICA, } ss:
Western District of Missouri, }

I, Louis Schmidt, clerk of the district court of the United States for the western district of Missouri, hereby certify the writing hereto annexed is a true and correct copy of the papers, proceedings, orders, and record in the case of Joseph Emile Snyder, bankrupt in bankruptcy, as fully as the same appears on file of record in said case in this office.

In witness whereof I hereto subscribe my name and affix the seal of this court, at office, in the city of Jefferson, said district, this 11th day of November, A. D. 1879.

[SEAL.] LOUIS SCHMIDT, *Clerk.*

UNITED STATES OF AMERICA,
Western District of Missouri, } ss:

I, Arnold Krekel, judge of the district court of the United States for the western district of Missouri, hereby certify that Louis Schmidt, whose signature appears to the within certificate, is and was at the date thereof the clerk of said court, and that said certificate is in due form.

In witness whereof I have hereunto subscribed my name, at office, in the said city of Jefferson, in said district, this 11th day of November, A. D. 1879.

A. KREKAL,
District Judge.

UNITED STATES OF AMERICA,
Western District of Missouri, } ss:

I, Louis Schmidt, clerk of the district court in and for the United States in and for the western district of Missouri, hereby certify that Hon. Arnold Krekel, whose signature appears to the above certificate, is and was at the date thereof the judge of said court; that said signature is in his own proper handwriting, and that said certificate is in due form, and that, as such, full faith and credit are and of right ought to be given to all of his official acts.

In witness whereof I hereto subscribe my name and affix the seal of said court, at office, in the city of Jefferson, in said district, this 11th day of November, in the year of our Lord eighteen hundred and seventy-nine.

[SEAL.]

LOUIS SCHMIDT,
Clerk of said Court.

155 Form No. 1.

Petition by Debtor.

To the Hon. Arnold Krekel, judge of the district court of the United States for the western district of Missouri:

The petition of Joseph E. Snyder, of the city of Kansas, in the county of Jackson and State of Missouri and district aforesaid, respectfully represents—

That he has resided in the city of Kansas, Missouri, for six (6) months next preceding the filing of this petition in the city of Kansas, in the county of Jackson and State of Missouri, within said judicial district; that he owes debts exceeding the amount of three hundred dollars ($300.00) and is unable to pay all of the same in full; that he is willing to surrender all of his estate and effects for the benefit of his creditors, and desires to obtain the benefit of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867.

That the schedule hereto annexed, marked "A" and verified by your petitioner's oath, contains a full and true statement of all his debts and (so far as it is possible to ascertain) the names and places

of residences of his creditors and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked "B" and verified by your petitioner's oath, contains an accurate inventory of all his estate, both real and personal, assignable under provisions of this act.

Wherefore your petition- prays that he may be adjudged by the court to be a bankrupt within the purview of said act, and that he may be decreed to have a certificate of discharge from all his debts provable under the same.

JOSEPH E. SNYDER, *Petitioner.*

M. D. FREFRON,
Attorney for Petitioner.

Oath to Foregoing Petition.

UNITED STATES OF AMERICA, }
District of Missouri, } *ss:*

I, Joseph E. Snyder, the petitioning debtor mentioned and described in the foregoing petition, do hereby make oath that the statements contained therein are true according to the best of my knowledge and belief, and I do further make oath that I am a citizen of the United States of America, and that I will bear true faith and allegiance to the same.

JOSEPH E. SNYDER, *Petitioner.*

Subscribed and sworn to before me this 29th day of November, A. D. 1867.

JAS. H. BEATY,
Register in Bankruptcy.

SCHEDULE A No. 3.

Creditors Whose Claims are Unsecured.

Ledger of vouchers.	Names of creditors.	Residence & occupation.	Amount.	When & where contracted.	Nature & consideration of the debt; any judgment, bond, bill of exchang issory note, &c., & whether contract copartners or joint contractor with other persons; and, if so, with whom. [Torn.]
			Dollars. Cents.		
	E. Jaccord & Co	Merchants, St. Louis, Mo.	2,088 20	St. Louis, Mo., 1857	Merchandise—judgment.
	Herman & Schwartz	Merchants, Kansas City, Mo.	270 71	Kansas City, Mo., 1857	Merchandise in judgment.
	C. G. Hopkins	Hotel keeper, Kansas City, Mo.	586 45	Kansas City, Mo., 1858	Land & mortgage in judgment.
	David Block	Merchant, Leavenworth, Ks.	45 00	St. Louis, Mo., 1857	Costs.
	Heolff & Heoppe	Merchants, St. Louis, Mo.	412 16	St. Louis, Mo., 1857	Merchandise in judgment.
	Beard & Brother	Manufacturers, St. Louis, Mo.	297 25	St. Louis, Mo., 1857	Iron safe in judgment.
	Shapley, Day & Co.	Merchants, St. Louis, Mo.	201 80	St. Louis, Mo., 1857	Merchandise—note.
	Adolphus Meir & Co.	Merchants, St. Louis, Mo.	600 00	St. Louis, Mo., 1857	Merchandise—note.
	S. & C. Speak & Co.	Merchants, St. Louis, Mo.	450 00	St. Louis, Mo., 1857	Merchandise—note.
	Bender, Hildebrand & Co.	Merchants, St. Louis, Mo.	400 61	St. Louis, Mo., 1857	Merchandise—note.
	C. G. Hopkins	Hotel keeper, Kansas City, Mo.	200 00	Kansas City, Mo., 1866	Rent.
	Augustus Rentz	Lawyer, Cincinnati, Ohio	200 00	Cincinnati, Ohio, 1857	Cash—note.

JOSEPH E. SNYDER, *Petitioner.*

157 *Oath to Schedule "A."*

UNITED STATES OF AMERICA, *Western District of Missouri,* } ss:

On this 29th day of November, A. D. 1867, before me personally came Joseph E. Snyder, the person mentioned in and who subscribed to the foregoing petition and schedule marked "A" respectively, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, &c., in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867.

JAS. H. BEATY,
Register in Bankruptcy.

Schedule "B" No. 2.

Personal property.	Dollars.	Cents.
A. Cash on hand	00	00
B. Bills of exchange, promissory notes, &c.	00	00
C.	00	00
D. Household goods and furniture, household stores, wearing apparel and ornaments of the person, two bedsteads, two tables, one kitchen safe, one cooking stove and utensils, one heating stove, one feather bed and bedding, two mattresses and one bureau, two wash-stands, bedding for two beds, and eleven chairs	00	00
E. Debts due petitioner on open accounts	00	00
A. Unliquidated claims of every nature	00	00
E. Eleven chairs	00	00

JOSEPH E. SNYDER, *Petitioner.*

Schedule "B" No. 5.

A particular statement of the property claims as exempt from the operation of this act by the provisions of the 14th section thereof, giving each item of property and its valuation and, if any portion of it is real estate, its location, description, and present use.

The property claimed to be exempt under the laws of any State is to be described separately from the rest and reference given to the statutes of said State creating the exemption.

Property exempt by sec. 14 of act.	Valuation. Dollars.	Cts.
Property Exempt by Laws of Missouri, by Statute.		
Two bedsteads, two tables, 1 kitchen safe, 1 cooking stove and utensils, 1 heating stove, 1 feather bed, bed and bedding, two mat-		

tresses, 1 bureau, 2 wash-stands, bedding for two beds, and eleven chairs.

JOSEPH E. SNYDER, *Petitioner.*

158 *Oath to Schedule "B."*

UNITED STATES OF AMERICA,
Western District of Missouri, } *ss:*

On this 29th day of November, A. D. 1867, before me personally came Joseph E. Snyder, the person mentioned in and who subscribed to the foregoing petition and schedule marked "B" respectively, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867.

JAS. H. BEATTY,
Register in Bankruptcy.

Filed December —, 1867, at 8 o'clock a. m.

AMOS PEABODY, *Clerk.*

Order of Reference to Register.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, a petitioner for adjudication in bankruptcy of himself.

In bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

Whereas Joseph E. Snyder, of the county of Jackson, State of Missouri, and district aforesaid, has, on this 2nd day of December, A. D. 1867, at 8 o'clock a. m., filed in the office of the clerk of said court a petition for adjudication in bankruptcy against himself, according to the provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867—

It is thereupon ordered that said petition be referred to James H. Beatty, one of the registers in bankruptcy in this court, to make adjudication thereof and take such other proceedings therein as are required by said act, and, further, that the said Joseph E. Snyder shall, on or before the — day of ——, at — o'clock — m., file with said register a duplicate copy of said petition and the schedules thereto annexed, and that he attend before said register on said day and thenceforth as said register may direct, to submit to such orders as may be made by such register or by this court relating to such bankruptcy.

And, further, that, until otherwise ordered by the court, the said

register shall act upon the matters arising in this case at his office at ——, at such time as he shall fix for that purpose.

And it is further ordered that the notice required herein by said act be published in the Journal of Commerce, a newspaper published in Kansas City, county of Jackson, and State of Missouri, in accordance with the rules adopted by this court governing proceedings in bankruptcy.

Witness the Hon. Arnold Krekel, judge of said court, and seal thereof, at the city of Jefferson, in said district, on Monday, the 2nd day of December, A. D. 1867.

[SEAL.] ADAMS PEABODY,
Clerk District Court of said District.

Date of order: Monday, December 1, 1867.
Filed August 28th, 1868.

ADAMS PEABODY, *Clerk.*

159 Form No. 12.

Abstract of Proceedings.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

At Lexington, Missouri, in said district, on the 24th day of December, A. D. 1867, before James H. Beatty, register in bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

December 7th, 1867, certified copies of petition, schedule, with order of reference, received.

December 24th, 1867, certificate issued that petition and schedule are correct in form.

December 24th, 1867, adjudication of bankruptcy.

December 24th, 1867, warrant issued Deputy Marshall B. Guiner, as mess., returnable at office of Jenkins and Johnson, on Main street, Kansas City, Missouri, on 29th day of February, A. D. 1868, at 10 o'clock a. m., at which time and place a court of bankruptcy will be held.

Also, at same time and place, the first meeting of creditors will be held.

A true copy of my record.

Attest: JAS. H. BEATTY,
Register in Bankruptcy.

Proceedings before J. H. Beatty, register, December 24th, 1867.
Filed in this court this 27th day of December, 1867.

ADAM PEABODY, *Clerk.*

Form No. 12.

Abstract of Proceedings.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, petitioning debtor.

In bankruptcy.

At chambers, in the city of Lexington, in said district, on the 24th day of December, A. D. 1867, before James H. Beatty, register in bankruptcy.

This day comes the above-named petitioning creditor and filed his duly certified copies of petition and schedule thereunto annexed, which I have examined, and do hereby certify the same to be correct in form.

JAMES H. BEATTY,
Register in Bankruptcy.

Filed in this court this 27th day of December, A. D. 1867.
ADAMS PEABODY, *Clerk.*

160 Form No. 5.

Adjudication of Bankruptcy upon Creditors' Petition.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, by whom a petition for adjudication of bankruptcy was filed on the 2nd day of December, 1867, in said court.

In bankruptcy.

At Lexington, Missouri, in said district, on the 24th day of December, A. D. 1867, before James H. Beatty, one of the registers of said court in bankruptcy.

I, the undersigned, a register of said court in bankruptcy, upon good proof before me, James H. Beatty, taken, do find that the said Jos. E. Snyder has become a bankrupt within the true intent and meaning of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867, and I do hereby declare and adjudge him a bankrupt accordingly.

JAMES H. BEATTY,
Register in Bankruptcy.

In the Matter of JOSEPH E. SNYDER, Bankrupt. Case 136.

Adjudication the 24th day of December, 1867.
Filed December 27th, 1867.

ADAMS PEABODY, *Clerk.*

Form No. 12.

Abstract of Proceedings.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

At Kansas City, in said district, on the 29th day of February, A. D. 1868, before me, James H. Beatty, register in bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

MEM. M.—This day attended the first meeting of creditors of said bankrupt, the bankrupt aforesaid, at said place where app. of assignee as appears by the papers herewith returned.

Warrant returned by G. Guiner, deputy marshall, as messenger, properly executed.

Court of bankruptcy held at 10 a. m.

Bender S. Etzel, of St. Louis, file- proof of claim for $640.00.

Meeting of creditors adjourned until March 2nd, 1868.

Meeting of creditors held March 2nd, 1868, and, creditors failing to select an assignee, Samuel G. Vose, of Jefferson City, is appointed.

Assignee notified of his appointment.

March 2nd, 1868, assignee accept- his appointment.

" " " certified copies of Schedules A and B furnished assignee.

March 2nd, 1868, list of debts proved furnished assignee.

A true copy of my docket.

Attest: JAMES H. BEATTY,
Register in Bankruptcy.

Filed in this court this 4th day of March, 1868.

ADAMS PEABODY, *Clerk.*

161 I, Frank Hudson, for Treate and Wilde and Company, proprietors and publishers of the Western Journal of Commerce, a newspaper published daily and weekly in the city of Kansas, Jackson county, Missouri, affirm that the following notice has been published in the aforesaid paper for twelve (12) times consecutively, commencing February 11, 1868.

FRANK HUDSON.

Subscribed and sworn to before me this 28th day of April, 1868.

JAMES H. BEATTY,
Register in Bankruptcy.

Notice in Bankruptcy.

UNITED STATES OF AMERICA, *Western District of Missouri*, } *ss:*

This is to give notice that on the 24th day of December, 1867, a warrant in bankruptcy was issued against the estate of Joseph E. Snyder, of Kansas City, in the county of Jackson and State of Missouri, who has been adjudged a bankrupt on his own petition; that the payment of any debts, delivery of any property belonging to said bankrupt to him or for his use, or the transfer of any property by him are forbidden by law.

That a meeting of the creditors of said bankrupt to prove their debts and to choose one or more assignees of his estate will be held at a court of bankruptcy to be holden at the office of Jenkins and Johnson, in Kansas City, Missouri, before James H. Beatty, register, on the 20th day of February, A. D. 1868, at 10 o'clock a. m.

Lexington, Missouri, 7th day of February, A. D. 1868.

THOMAS B. WALLACE,
U. S. Marshall, as Messenger, Western District of Missouri.

Form No. 6.

Warrant to Messenger.

Voluntary bankruptcy.

In the Circuit Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, by whom a petition for adjudication in bankruptcy was filed on the 2nd day of December, A. D. 1867, in said court.

In bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

To the marshall of the western district of Missouri, Greeting:

Whereas a petition for adjudication in bankruptcy and for relief under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867, was, on the 2nd day of December, 1867, filed by Joseph E. Snyder, of Kansas City, Missouri, in said district, upon which he has been found and adjudged a bankrupt, there being no opposing party thereto:

You are, therefore, hereby directed, as messenger, to publish three (3) times in the Journal of Commerce (once in daily and two times in weekly), the first publication to be made forthwith, the following notice, to wit:

This is to give notice that on the 24th day of December, A. D. 1867, a warrant of bankruptcy was issued against the estate of Joseph

E. Snyder, of Kansas City, in the county of Jackson and State of Missouri, who has been adjudged a bankrupt on his own petition; that the payment of any debts and delivery of any property belonging to such bankrupt to him or — his use and the transfer of any property by him are forbidden by law, and a meeting of the creditors of said bankrupt will be held at a court of bankruptcy to be held at office of Jenkins and Johnson, attorneys, on Main street, Kansas City, Missouri, before James H. Beatty, register, on the 29th day of February, A. D. 1868, at 10 o'clock a. m.

162 And you are directed to serve written or printed notice forthwith by mail upon all creditors upon the schedule filed with said bankrupt's petition or whose names may be given you in addition thereto by the debtor at least ten (10) days before the appointed meeting of said court as follows *form*, to wit:

To Mr. —— ——, of ——, county of —— and State of ——, creditor of —— ——, bankrupt:

You are hereby notified that a warrant of bankruptcy has been issued out of the district court of the United States for the western district of Missouri against the estate of Joseph E. Snyder, adjudged a bankrupt upon his own petition.

That the payment of any debts and the delivery of any property by him are forbidden by law; that a meeting of the creditors of said bankrupt, to wit:

E. Jacard and Co.	St. Louis, Mo.	$2,088 20
Herman S. Swartz	Kansas City, Mo.	270 71
C. G. Hopkins	Kansas City, Mo.	586 45
David Buck	Leavenworth, Kansas	45 00
Wolff and Hoppee	St. Louis, Mo.	412 16
Beavel and Brothers	St. Louis, Mo.	297 25
Shupply, Day and Co.	St. Louis, Mo.	201 80
Adolph, Mier and Co.	St. Louis, Mo.	600 00
L. H. Speck and Co.	St. Louis, Mo.	450 00
Bender, Hildebrand and Co.	St. Louis, Mo.	400 61
C. G. Hopkins	Kansas City, Mo.	200 00
Augustus Rentz	Cincinnati, O.	200 00

to prove their debts and choose one or more assignees of his estate will be held at the court of bankruptcy to be holden on the 29th day of February, A. D. 1868, at 10 o'clock a. m., at office of Jenkins and Johnson, at Kansas City, before James H. Beatty, register.

And have you then and there this warrant with your doings thereon.

Witness the Honorable Arnold Krekel, judge of said court, and the seal thereof, at —, in said district, on the 24th day of December, A. D. 1887.

ADAMS PEABODY,

[SEAL.] *Clerk District Court for said District.*

Return of Messenger.

WESTERN DISTRICT OF MISSOURI, *ss:*

At Kansas City, on the 29th day of February, A. D. 1868, by virtue of the within warrant, I have caused the notice therein ordered to be published by advertisement two times in the newspapers within mentioned, the first publication of which was on the — day of ——, A. D. 187–, in the Journal of Commerce, and I also on the 4th day of February, A. D. 1868, sent by mail or served personally upon the creditors and others named in said warrant a copy of the notice required thereby to be sent to or served on them, and all of said notices were according to the directions set out in said warrant.

Fees.

1.	For service of warrant	$2 00
2.	For necessary travel, — miles, at five cents per mile each way	
3.	For each written notice to creditor named in the schedule, 10 cents	1 20
4.	For actual and necessary expense in publication of notice	3 00
163	*S.* Stationery	26
	6. Stamps	36
	App'd eight and $\frac{80}{100}$ dollars	$8 80

A. KREKEL, *Judge.*

WESTERN DISTRICT OF MISSOURI, *ss:*

THOMAS B. WALLACE,
U. S. Marshall, as Messenger, West Dist. Mo.,
By B. GRIMES, *Deputy.*

WESTERN DISTRICT OF MISSOURI, *ss:*

KANSAS CITY, *July 29th, A. D.* 1868.

Then personally appeared the said Brisco Gainer, dept. marshall, as messenger, and made oath that the above expenses returned by him, in addition to his fees, were actually and necessarily incurred and paid by him, and that the same are just and reasonable.

Before me—

JAMES H. BEATTY,
Register in Bankruptcy.

Warrant to messenger. Issued 24th Dec., 1867; returnable 29th day of February, 1868, before James H. Beatty, register.

Returned into court and filed this 28th day of August, A. D. 1868.

ADAMS PEABODY, *Clerk.*

Duplicate.

$400.61. ST. LOUIS, *Sept.* 14*th*, 1857.

Six (6) months after date I promise to pay to the order of Bender, Hildebrand and Company four hundred and sixty-one hundredths ($400.61) dollars, for value received, negotiable and payable, without defalcation or discount and with the interest from maturity, at the rate of — per cent. per annum.

No. 236. Due Mar. 14–17, 1858.

J. E. SNYDER.
JOSEPH GODARD.
L. LEMOINE.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

At my office, at the city of St. Louis, in the county of St. Louis and State of Missouri, on the 13th day of February, 1868, before me, Lucian Eaton, register in bankruptcy, came George Bender, of St. Louis, Missouri, in the county of St. Louis and State of Missouri, and makes oath and says that the said Joseph E. Snyder — the person by whom a petition for adjudication of bankruptcy has been made and filed and at and before the filing of said petition was and still is justly and truly indebted to deponent and Frederick Etzl, copartners by the name of Bender and Etzl, St. Louis, Missouri, in the sum of six hundred and forty dollars and no cents ($640.00) for merchandise sold — delivered to said Snyder — to Goddard and Company, a firm of which the bankrupt was then a member, by the firm of Bender, Hildebrand and Company, and now evidenced by the annexed note, marked "A," endorsed by said last-named firm, payees, signed by said Snyder, Joseph Goddard, and P. Lemonia, for the sum of six hundred and forty dollars ($640.00) or any part thereof. This deponent says that they have not nor has any person by their order or to this deponent's knowledge or belief for their use had and received any manner of satisfaction or security whatsoever.

And this deponent says that the said claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bank-
164 ruptcy throughout the United States," approved March 2nd, 1867; that no bargain-, express or implied, have been entered into by or in behalf of this deponent firm to sell, transfer, or dispose of said claim or any part thereof against said bankrupt or to take or receive, directly or indirectly, any money, property, or consideration whatever whereby the vote of this deponent's firm for assignee or any action on the part of this *this* deponent's firm or any other person in the proceedings under said act has been, is, or shall be in any way affected, influenced, or controlled.

GEORGE BENDER,
Deposing Creditor.

Subscribed and sworn to before me this 13th day of February, A. D. 1868.

This proof is satisfactory to me.

LUCIAN EATON,
Register in Bankruptcy.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

At Kansas City, in said district, on the 2nd day of March, A. D. 1868, before me, James H. Beatty, register in bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

MEMORANDUM.—This being the day appointed by the court for the first meeting of creditors under the said bankruptcy, whereof the notice required in that behalf has been duly given—

I, the undersigned, register in bankruptcy of said court of bankruptcy, sat at the time and place above mentioned, pursuant to such notice, to take the proof of debts and for the choice of assignee under the said bankruptcy; and I do hereby certify that the greater part in number and in value of the creditors who have proved their debts were present or duly represented but failed to make choice of an assignee of said bankruptcy estate, and, there being no opposing interests, I appointed Sam. A. Vose, of Jefferson City, in the county of Cole and State of Missouri, as assignee of the same.

JAMES H. BEATTY,
Register in Bankruptcy.

Meeting held 2nd day of March, 1868.

Filed in court this 4th day of March, 1868.

ADAMS PEABODY.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

To Sam. A. Vose, in the city of Jefferson, county of Cole and State of Missouri:

I do hereby certify to you that you were duly appointed assignee of the estate and effects of the above-named bankrupt at the first meeting of creditors, on the 2nd day of March, A. D. 1868, and I do hereby approve and confirm said appointment.

And I do further certify that the greater part in value and in number of the creditors of said bankrupt who have proved their claims were present or were duly represented at said meeting.

Dated at Kansas City, Missouri, the 2nd day of March, A. D. 1868.

JAMES H. BEATTY,
Register in Bankruptcy.

165 *Acceptance of Assignee.*

To whom it may concern:

Be it known that I hereby signify my acceptance of the trust of assignee of the estate of the above-named bankrupt this 2nd day of March, A. D. 1868.

SAM'L A. VOSE.

Appointment of assignee. Filed March 4th, 1868.
ADAMS PEABODY, *Clerk.*

Form No. 18.

Assignment of Bankrupt's Effects.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

Know all men by these presents that Sam'l A. Vose, of the city of Jefferson, in the county of Cole and State of Missouri, in said district, has been duly appointed assignee in said matter.

Now, therefore, I, James H. Beatty, register in bankruptcy, by virtue of and authority in me vested by the fourteenth section of an act of Congress entitled "An act to establish an uniform system of bankruptcy throughout the United States," approved March 2nd, 1867, do hereby convey and assign to the said Samuel A. Vose, assignee as aforesaid, all the estate, real and personal, of the said Joseph E. Snyder, bankrupt aforesaid, including all the property of whatever kind of which he is possessed or in which he was interested or entitled to have on the 2nd day of December, A. D. 1867, with all his debts, books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said fourteenth section ofsaid act:

To have and to hold all the foregoing premises to the said Samuel A. Vose and his heirs forever, in trust, nevertheless, for the use and purpose, with the powers, and subject to the conditions and limitations set forth in said act.

In witness whereof I, the said James H. Beatty, have hereunto set my hand this 2nd day of March, 1868.

JAMES H. BEATTY,
Register in Bankruptcy.

Filed in court this 4th day of March, 1868.
ADAMS PEABODY, *Clerk.*

Exempted Property.

In the District Court of the United States for the — District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

At the city of Jefferson, county of Cole, in said districts, on the 24th day of April, A. D. 1868.

WESTERN DISTRICT OF MISSOURI, *ss:*

The following is a schedule of the property designated and set apart to be retained by the bankrupt aforesaid as his own property under the provisions of the ninth section of the act of Con-
166 gress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867:

General head.	Particular description.	Value.
Necessary household and kitchen furniture.	2 bedsteads	10 00
	2 tables	10 00
	1 safe	5 00
	1 cook stove and furniture	15 00
	1 heating stove	10 00
	1 feather bed and bedding	15 00
	2 mattresses	14 00
Other articles necessary	1 bureau	10 00
	2 wash-stands	10 00
	Bedding for 2	30 00
	11 chairs	11 00
Wearing apparel of bankrupt and his family.	Wearing apparel	75 00

SAMUEL A. VOSE, *Assignee.*

Filed April 28th, 1868.

ADAMS PEABODY, *Clerk.*

Form No. 12.

Abstract of Proceedings.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

At Lexington, in said district, on the 20th day of May, A. D. 1868, before James H. Beatty, register in bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

Upon the application of Samuel A. Vose, assignee of said bankrupt, it is ordered that a second meeting of creditors be held at

Lexington, Missouri, before said register, at his office, on the 18th day of June, 1868, at 10 o'clock a. m.

A true copy of my record.

Attest: JAMES H. BEATTY,
Register in Bankruptcy.

Filed in court this 1st day of June, A. D. 1868.
ADAMS PEABODY, *Clerk.*

Form No. 12.

Abstract of Proceedings.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

At Lexington, in said district, on the 18th day of June, A. D. 1868, before James H. Beatty, register in bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

MEMORANDUM.—This day the following proceedings were filed in the above cause. The second meeting of creditors held this day.

167 Assignee not making his report, the meeting is adjourned till July 6, 1868.

A true copy of my record, as appears by the pappers herewith returned.

Attest: JAMES H. BEATTY,
Register in Bankruptcy.

Filed in court this 2nd day of June, 1867.
ADAMS PEABODY, *Clerk.*

Form No. 12.

Abstract of Proceedings.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

MEMORANDUM.—This day the following proceedings were filed in the above cause:

It is ordered that said bankrupt appear at the office of Jenkins

and Johnson, in Kansas City, Missouri, before said register on July 17th, 1868, for examination.

Bankrupt notified of said order.

True copy of my record.

Attest: JAMES H. BEATTY,
Register in Bankruptcy.

Proceedings before register on 26th July, A. D. 1868.

Filed in court this 29th day of June, A. D. 1868.
ADAMS PEABODY, *Clerk.*

Form No. 35.

Assignee's Return Where There Are No Assets.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

At the city of Jefferson, in the county of Cole, in said district, on the 18th day of June, A. D. 1868.

WESTERN DISTRICT OF MISSOURI, *ss:*

On the day aforesaid before me comes Samuel A. Vose, of the city of Jefferson, county of Cole, and State of Missouri, and makes oath and says that he, this deponent, as assignee of the estate and effects of the above-named bankrupt, neither received nor paid any monies on account of the estate, nor has he any knowledge of any property that will come to his possession.

Subscribed and sworn to *at* this 29th day of June, A. D. 1868.
JAMES H. BEATTY,
Register in Bankruptcy.

Filed in court this 3rd day of July, A. D. 1868.
ADAMS PEABODY, *Clerk.*

Form No. 12.

Abstract of Proceedings.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

168 At Lexington, in said district, on the 6th day of July, A. D. 1868, before James H. Beatty, register of bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

The adjourned second meeting of creditors held this day. Assignee's verified report filed; also proof of publication of notice.

A true copy of my record.

Attest: JAMES H. BEATTY,
Register in Bankruptcy.

Filed in court this 8th day of July, A. D. 1868.
ADAMS PEABODY, *Clerk.*

Notice in Bankruptcy.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

Take notice that an order has been issued by the district court of said district calling a second meeting of the creditors of said bankrupt to be held at the office of James H. Beatty, in the city of Lexington, on the 18th day of June, 1868, for purposes set forth in the 27th section of the bankrupt act of March 2nd, 1867.
SAMUEL A. VOSE, *Assignee.*

I, Samuel Baker, one of the proprietors and publishers of the Journal of Commerce, a newspaper published daily and weekly in the city of Kansas, Jackson county, State of Missouri, affirm that the following notice has been published in the aforesaid paper for two times weekly consecutively, commencing May 30th, 1868.
SMITH BAKER.

Subscribed and sworn to before me this 20th day of June, 1868.
C. TRABER,
Notary Public.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

To the Honorable Arnold Krekel:

At the city of Lexington, county of Lexington, in said district, on the 18th day of June, A. D. 1868, I, Samuel A. Vose, assignee of the aforesaid bankrupt, do hereby submit the following statement of said bankrupt's estate:

Money expended and for what purpose.	Assets received & description of same.	Property that bankrupt has on interest, &c.	Money received and what and where deposited.
Hotel bill ..... 3 25 Horse hire ..... 3 00 Paid road fare 2 00	None.	None.	None.

I do hereby certify that the foregoing is a true and correct statement of the estate of Joseph E. Snyder.
SAMUEL A. VOSE.

Subscribed and sworn to before me this 29th day of June, 1868.
JAMES H. BEATTY.

169 Form No. 12.

Abstract of Proceedings.

In the District Court of the United States in and for the District of Kansas.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

At Kansas City, in said district, on the 17th day of July, A. D. 1868, before register in bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

MEMORANDUM.—This day the following proceedings are filed in the above cause.

Bankrupt appears and is examined.

Is a true copy of the record.

Attest: JAMES H. BEATTY,
Register in Bankruptcy.

Filed in court this 27th day of July, A. D. 1868.
ADAMS PEABODY, *Clerk.*

Form No. 12.

Abstract of Proceedings.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

At office, in Kansas City, Missouri, in said district, on the 17th day of July, A. D. 1868.

WESTERN DISTRICT OF MISSOURI, *ss:*

I, Joseph E. Snyder, the person declared a bankrupt under a petition for adjudication of bankruptcy filed December 2nd, 1867, do solemnly swear that I will make true answers to all and each question as may be propounded to me respecting all the property of the said bankrupt and all dealings and transactions *and* relating thereto, and will make a full disclosure of all that has been done with the said property to the best of my knowledge, information, and belief.

JOSEPH E. SNYDER, *Bankrupt.*

Subscribed and sworn to before me this 17th day of July, A. D. 1868.

JAMES H. BEATTY,
Register in Bankruptcy.

Form No. 12.

Abstract of Proceedings.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

At Kansas City, in said district, on the 17th day of July, A. D. 1868, before James H. Beatty, register in bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

Joseph E. Snyder, of Kansas City, in the county of Jackson and State of Missouri, being duly sworn, cautioned, and examined at the time and place above mentioned, upon his oath says:

My residence for the last ten (10) years has been in Kansas City, Missouri, and my business during this time has been watch-
170 making and part of my time spent in the army. I commenced business in August, 1857, in partnership with Gaudit and Lewain under the firm name of "Snyder, Godert and Company," which was dissolved on October following. I continued in possession of the goods under the authority of a receiver, who had been appointed by the creditors of the firm, until the goods were sold by the sheriff. I suppose I had, when I commenced business, about four thousand dollars ($4,000), one of the partners had about twelve hundred dollars ($1,200), and the other partner had nothing. We had a stock of about ten thousand dollars ($10.000), being partly on credit. My losses were occasioned by the seizing and sale of goods and their sale at a great sacrifice. The goods were first seized by attachment, mostly for the debts of the other members of the firm, and also for a partnership debt. I had nothing left from the sale of the goods, and the debts were only part paid. After the above business was closed I went in with my brother-in-law, working for him in the jewelry business and receiving pay for my services, until I went into the army, in 1862.

While I was in the army a judgement was rendered against me, under which my house and lot in Kansas City was sold for about five hundred dollars ($500.00), which was worth about twenty-five hundred dollars ($2,500.00).

I have no property except my tools.

JOSEPH E. SNYDER.

Filed in court this 27th day of July, 1868.

ADAMS PEABODY, *Clerk.*

Subscribed and sworn to before me this date first above written.

JAMES H. BEATTY, *Register.*

Filed July 27th, 1868.

ADAMS PEABODY, *Clerk.*

171 Form No. 10.

Common Order.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

At Lexington, in said district, on the 23rd day of July, A. D. 1868, before James H. Beatty, one of the registers of said court in bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

Upon the application of said bankrupt by petition for a discharge from his debts, there being no opposing interest, it is ordered—

That Thursday, the 3rd day of September, A. D. 1868, be appointed a day for creditors to show cause before the judge of this court.

That the third meeting of creditors be held before said register, at his office, in Lexington, Missouri, on the 26th day of August, A. D. 1868.

That the assignee, Samuel A. Vose, give notice of said meeting in accordance with the rules of said com. by publication in the newspaper "Journal of Commerce."

Bankrupt files his final oath.

A true copy of my record.

Attest: JAMES H. BEATTY, *Register.*

Filed July 25th, 1868.

ADAMS PEABODY, *Clerk.*

Form No. 51.

Petition of Bankrupt for His Discharge.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

To the Hon Arnold Krekel, judge of the district court of the United States for the western district of Missouri:

Joseph E. Snyder, of Kansas City, Missouri, in the county of Jackson and State of Missouri, in said district, respectfully present- *and* on the 24th day of December, A. D. 1867, he was duly declared a bankrupt under the act of Congress in that case made and provided.

And that he has duly surrendered all his property and rights of property and fully complied with and obeyed all the orders and directions of the court touching his said bankruptcy, and he is ready to submit himself to any other and further examination, orders, and directions which the court may require.

Wherefore he prays that he may be decreed by the court to have a full discharge from all his debts provable under said bankrupt act and a certificate thereof granted according to the said act of Congress.

Dated this 17th day of July, A. D. 1868.

JOSEPH E. SNYDER, *Bankrupt.*

UNITED STATES OF AMERICA, *Western District of Missouri,* } *ss:*

Joseph E. Snyder, the petitioner above named, hereby make oath that the statements contained in the foregoing petition subscribed by him are true so far as the same are stated of his own knowledge, and that those matters which are stated therein on information and belief are true according to the best of his knowledge, information, and belief.

JOSEPH E. SNYDER, *Petitioner.*

172 Subscribed and sworn to before me this 17th day of July, A. D. 1868.

JAMES H. BEATTY,
Register in Bankruptcy.

UNITED STATES OF AMERICA, *Western District of Missouri,* } *ss:*

Joseph E. Snyder, of the county of Jackson and State of Missouri, upon his solemn oath do hereby declare that he was on the 24th day of December, A. D. 1867, duly adjudged a bankrupt within the purview of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867, and that he has not done or been privy to any act, matter, or thing specified in said act as a ground for withholding his discharge thereunder or as invalidating the same if granted.

JOSEPH E. SNYDER, *Bankrupt.*

Subscribed and sworn to before me this 17th day of July, A. D. 1868.

JAMES H. BEATTY,
Register in Bankruptcy.

Filed in this court this 25th day of July, A. D. 1868.

ADAMS PEABODY, *Clerk.*

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

On the 27th day of July, A. D. 1868, on reading the petition of the above-named bankrupt for his discharge, it is ordered by the

court that a hearing be had on the same on the 3rd day of September, A. D. 1868, before said court, at the judge's chambers, in the city of Jefferson, in said district, at 10 o'clock a. m., and that notice thereof be published in the "Journal of Commerce," a newspaper printed and published in said district, for two times once a week, and that all creditors who have proved their debts and other persons in interest may appear at the said time and place and show cause, if any they have, why the prayer of said petition should not be granted.

And it is further ordered that the third meeting of the creditors herein be had before James H. Beatty, register in bankruptcy, at his office, in the city of Lexington, in — county of Lafayette, in said district, on Wednesday, the 26th day of August, A. D. 1868, at 10 o'clock a. m.

And it is further ordered by the court that all such creditors whose places of residence are known shall be entitled to receive service of notice of the said petition and order, either personally or by letter, addressed to them at their known usual place of residence, attested by the clerk of the court, or served at their usual places of abode by the marshall or his deputy, or sent by mail, whereof due proof shall be given.

Witness the Hon. Arnold Krekel, judge of said court, and the seal thereof, at the city of Jefferson, in said district, on the 27th day of July, A. D. 1868.

ADAMS PEABODY, *Clerk.* [SEAL.]

Form No. 12.

Abstract of Proceedings.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

At Lexington, in said district, on the 26th day of August, A. D. 1868, before James H. Beatty, register in bankruptcy.

173 WESTERN DISTRICT, STATE OF MISSOURI, *ss:*

The third meeting of the creditors held this day.

Assignee files his final report, including assignee'- verified statement of his proceedings, assignee's account and fee bill with said estate.

Publication of notice of his appointment; publication of notice of final meeting.

Report of assignee examined and found correct.

Report of case made to said court for discharge.

I hereby certify that the above is a true copy of my docket.

JAMES H. BEATTY,
Register in Bankruptcy.

Filed in court this 28th day of August, A. D. 1868.

ADAMS PEABODY, *Clerk.*

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

To whom it may concern:

The undersigned hereby gives notice of his appointment as assignee of Joseph E. Snyder, of the county of Jackson, of said State, who has been adjudged a bankrupt upon his own petition by the district court of said district.

Jefferson City, this 3rd day of April, 1868.

SAMUEL A. VOSE, *Assignee.*

I, Smith Baker, one of the proprietors and publishers of the Journal of Commerce, a newspaper published daily and weekly in the city of Kansas, Johnson county, Missouri, affirm that the following notice has been published in the aforesaid paper for three (3) times weekly consecutively, commencing April 11, 1868.

SMITH BAKER.

Subscribed and sworn to before me this 8th day of May, 1868.

[SEAL.] L. TRABER,
Notary Public.

Affidavit of Publication.

I, Smith Baker, one of the proprietors and publishers of the Journal of Commerce, a newspaper published daily and weekly in the city of Kansas, Jackson county, Missouri, affirm that the following notice has been published in the aforesaid paper for two (2) times weekly consecutively, commencing August 1st, 1868.

SMITH BAKER.

Notice in Bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

In the District Court of the United States.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

Before the Honorable Arnold Krekel.

To creditors of above-named bankrupt:

Take notice that the aforesaid bankrupt has filed his petition in said district court for a discharge from all debts, and that said court has appointed the 3rd day of September, A. D. 1868, at ten (10) o'clock a. m. of that day, at chambers, in the city of Jefferson, in said district, as the time and place when and where you may attend and show cause, if any you have, why said bankrupt should not be discharged; and you are further notified that a third meeting of the creditors of said bankrupt will be held before James H. Beatty, register, at his office, in the city of Lexington, on the 26th day of August, A. D. 1868, and that I shall file my final accounts as assignee

of said estate, and then and there I shall apply to said court for my discharge from all liabilities to any creditors as assignee
174 of said estate in accordance with the provisions of the twenty-eighth section of the bankrupt act of March 2nd, 1867.

SAMUEL A. VOSE, *Assignee.*

Subscribed and sworn to before me this 8th day of August, A. D. 1868.

JAMES H. BEATTY, *Register.*

In the District Court of the United States, Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

To the Hon. A. Krekel:

At the city of Lexington, county of Lafayette, in said district, on the 26th day of August, A. D. 1868, I, Samuel A. Vose, assignee of the aforesaid bankrupt, do hereby submit the following statement of said bankrupt estate:

Money expended; for what purpose.	Assets rec'd and descp. from—	Prop. that bankrupt has int. in.	Money used, for what, and where deposited.
Railroad fare 5 00			
Hotel bill 3 25			

I hereby certify that the foregoing is a true statement of the estate of Joseph E. Snyder.

SAMUEL A. VOSE, *Assignee.*

Subscribed and sworn to this 2nd day of August, 1868.

J. H. BEATTY, *Reg.*

Account of Assignee.

The estate of Jos. E. Snyder, bankrupt, in account with said Samuel A. Vose, assignee, Cr.

R. R. fare	$5 00
Hotel bill	3 25
Printing	14 00
Fee bill	25 00
	$47 70

Form No. 37.

Affidavit to be Made by Assignee.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

On this 26th day of August, A. D. 1868, before me came Samuel A. Vose, of the city of Jefferson, in the county of Cole and State of Missouri, and makes oath and says that he, this deponent, was on the 2nd day of March, A. D. 1868, appointed assignee of the estate and effects of the above bankrupt, and that as such assignee he has conducted the settlement of said estate; that the account hereto annexed, containing — sheets of paper, the first sheet whereof is marked with the letter —, is true and contains entry of every sum of money received by deponent on account of the estate and effects of the above-named bankrupt, and that the payments
175 purporting in such accounts to have been made by deponent have been so made by him.

And he asks to be allowed for said payments and for charges of settlement as set forth in said account.

SAMUEL A. VOSE, *Assignee.*

Sworn to and subscribed at Lexington, in said western district of Missouri, this 21st day of August, A. D. 1868, before me—

JAMES H. BEATTY,
Register in Bankruptcy.

Form No. 29.

Return of Assignee.

In the Matter of JOSEPH E. SNYDER. Bankrupt.

In bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

I, —— ——, assignee of the estate of Joseph E. Snyder, do certify that I have caused the notices required by the foregoing order to be published in the newspaper called the Journal of Commerce, printed at Kansas City, Jackson county, Missouri, on the — day of ——, A. D. 186–, and that I have caused written or printed notices of the time and place of such meeting to be sent by mail, postpaid, to all known creditors of said bankrupt.

Said notices were mailed at the post office in the city of Jefferson on the 27th day of July, A. D. 1868, at —— days prior to the date appointed of the said meeting.

SAMUEL A. VOSE, *Assignee.*

Subscribed and sworn to at Lexington this 21st day of August, A. D. 1868, before me—

J. H. BEATTY,
Register in Bankruptcy.

Order of Settlement and Discharge of Assignee.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER. Bankrupt.

In bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

The foregoing account having been presented for allowance and having been examined and found correct, it is ordered that the same be allowed, and that the said assignee be discharged according to the provisions of the 28th section of the bankrupt act of March 2nd, 1867.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

At office, in Lexington, in said district, on the 26th day of August, A. D. 1868, before J. H. Beatty, register in bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

I, James H. Beatty, the register in charge of this case, under the orders of reference therein made, hereby report that all meetings of creditors therein have been held; that a hearing upon the application of bankrupt for discharge has been had before me as ordered; that the estate of said bankrupt appears to have been fully administered; that the accounts and proceedings of the assignee have been by me examined and found correct and in conformity with law; that my duties under the law and orders of the court in said case are fully completed and ended, and that all papers in my charge relating thereto are therefore herewith returned and filed.

JAMES H. BEATTY.

176 Be it remembered at a court of bankruptcy begun and held at Jefferson City, Missouri, on Friday, September 25th, 1868, the following entry appears of record, to wit:

In the Matter of JOSEPH E. SNYDER. Case No. 136.

Voluntary bankruptcy.

The accounts herein of the several officers are allowed by the court; and now—

Whereas Joseph E. Snyder has been duly assigned a bankrupt under the provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that the said Joseph E. Snyder be forever discharged from all debts and claims which by said act are made provable and against his estate and which existed on the 2nd day of December, A. D. 1868, on which day the petition for adjudication of the estate of Joseph E. Snyder and to——

And it is further ordered that upon payment of all dues herein a copy of said discharge be issued and delivered to said bankrupt.

MEM.—Certificate issued on February 15th, 1868, costs being paid.

Copy of Discharge.

Discharge in bankruptcy.

In the District Court of the United States for the Western District of Missouri.

Whereas Joseph E. Snyder has been duly adjudged a bankrupt under the act of Congress establishing a uniform system of bankruptcy throughout the United States and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court—

That said Joseph E. Snyder be forever discharged from all debts and claims which by said act are made provable against said estate and which existed on the 2nd day of December, A. D. 1868, on which day the petition for adjudication was filed by him, excepting such debts, if any, as are by said act exempted from the operation of a discharge in bankruptcy.

In witness whereof I have hereunto subscribed my name and affixed the seal of said court, at the city of Jefferson, western district of Missouri, this 15th day of February, A. D. 18—.

(Signed) A. KREKEL,
District Judge.

Attest: ADAMS PEABODY,
Clerk of the District Court for said District.

UNITED STATES OF AMERICA, *Western District of Missouri,* } ss:

I, Louis Schmidt, clerk of the district court of the United States for the western district of Missouri, hereby certify that the writing hereto annexed is a true copy of the record of this court made September 25th, 1868, being the discharge in bankruptcy of Joseph E. Snyder, bankrupt, in bankruptcy, as fully as the same remains of record in said case in this office.

In witness whereof I hereto subscribe my name and affix the seal

of said court, at office, in the city of Jefferson, in said district, this 15th day of November, A. D. 1879.

LOUIS SCHMIDT, *Clerk*,
[SEAL.] By D. C. WEATHERBY, *D. C.*

177 UNITED STATES OF AMERICA,
Western District of Missouri, Eastern Division.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOS. E. SNYDER. Bankrupt. Case No. 136.

Vol. bankruptcy.

Be it remembered that at a court of bankruptcy held at Jefferson City on Wednesday, February 9th, 1870, the following proceedings were had in the above-entitled cause, to wit:

AT CHAMBERS, WEDNESDAY, *February 9th*, 1870.

In the Matter of JOE E. SNYDER. Case No. 136.

Vol. bank'cy.

And now comes Joseph L. Norman, by his attorneys, Samuel A. Vose, E. L. Edwards and Son, and filed a petition to set aside the discharge of said Joseph E. Snyder.

Whereupon a summons is ordered to be issued against the said Joseph E. Snyder, returnable to the next March term of the court.

And the petition so filed is in words and figures as follows, to wit:

In the District Court of the United States for the Western District of Missouri.

JOSEPH L. NORMAN, Complainant,
vs.
JOSEPH E. SNYDER, Respondent.

To the Honorable Arnold Krekel, judge of the district court of the United States for the western district of Missouri, *ss:*

Joseph L. Norman, hereby complaining, showeth unto your honor that on the 2nd day of December, A. D. 1867, defendant, Joseph E. Snyder, of the county of Jackson, within said western district of Missouri, was adjudged a bankrupt in accordance with an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867.

Complainant further showeth unto your honor that on the 25th day of September, A. D. 1868, that your honor granted and issued to said Joseph E. Snyder his discharge, as the act aforesaid makes and provides, it being less than two years from the date of said discharge until the present time.

Complainant further represents that at the time of adjudication of said Snyder as a bankrupt and at the time of granting said dis-

charge that E. Jacard and Company, of St. Louis, Missouri, held and were the legal owners of a just and lawful claim against said respondent, the evidence of said claim being a judgement rendered by the circuit court of Jackson county on or about the 18th day of September, A. D. 1858, for the amount and sum of three thousand and nine hundred and three and seventy-hundredths dollars ($3,903.70).

Complainant further represents that at the date of the granting of said discharge to respondent that said claim of three thousand nine — and three and seventy-hundredths (3,903.70) dollars was due and payable against the estate of said Snyder in bankruptcy.

Complainant further represents that since the granting of said discharge, to wit, on or about the 8th day of February, A. D. 1870, E. Jacard and Company sold, transferred, and delivered to said Jos. E. Norman the aforesaid judgement and debt against said Snyder for a good and valuable consideration, a certified copy of which judgement being herewith exhibited.

Complainant further alleges that at the time *of* said Snyder filed his petition in this honorable court praying for that he be
178 adjudged a bankrupt, to wit, on the 2nd day of December, A. D. 1867, he willfully swore falsely in the affidavit annexed to Schedule "A," which formed a part and parcel of his, said Snyder's, petition, for at the time he, said Snyder, made said affidavit he owned in his own name the following real estate, situate in the county of Wyandotte and State of Kansas, described as follows, to wit:

Commencing at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), thence south sixty-one and one-half (61½) degrees west six hundred and forty (640) feet and two (2) inches; thence south twenty-eight and one-fourth (28¼) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east eight hundred and seventy-one (871) feet and two (2) inches; thence along the west bank of the Missouri river north twenty-eight and one-half (28½) degrees west three hundred (300) feet; thence south sixty-one half (61½) degrees west two hundred and thirty-one (231) feet to the place of beginning, and contains six (6) acres aforesaid, land, tract, or parcel of land being the same that said Snyder acquired by deed from David E. James and J. M. James, his wife, dated 27th day of April, A. D. 1864, as shown by a certified copy of said deed herewith exhibited, the original not being in the custody or any ways subject to the control of complainant.

Complainant further charges and alleges that said Snyder did not schedule aforesaid property in his schedules filed with his petition, and that he wilfully refused to so do for the purpose of preventing his property being distributed as the bankrupt act aforesaid provides, and that he, said Snyder, wilfully concealed said property, but at the same time the title to said property being in his name.

Complainant further represents at the time of granting said discharge said firm of "J. Jaccard and Company" had no knowledge or

information that said Snyder had or possessed any property other than that by him embodied in his said schedules filed with his said petition in bankruptcy.

Wherefore complainant prays your honor to set aside and annul said discharge, and that he have judgement for amount of said claim of three thousand nine hundred and three and seventy-hundredths ($3,903.70) dollars, together with interest on the same, and for other and further orders your honor deems expedient, as your complainant ever prays.

SAMUEL A. VOSE AND
E. L. EDWARDS AND SON,
Attorneys.

Filed February 9th, 1870, at 10 a. m.
ADAMS PEABODY, *Clerk.*

And the summons so issued on the 9th day of February is in words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
Western District of Missouri, }

The President of the United States of America to the marshall of the United States for the western district of Missouri, Greeting:

You are hereby commanded to summon Joseph E. Snyder, if he be found in your district, to be and appear before the district court of the United States for the western district of Missouri on the first day of the next term thereof, to be begun and held at Jefferson City, in said district, on the first Monday in March next, to answer the complaint of Joseph L. Norman, as set forth in his declaration, a true copy of which is hereto annexed, and do you certify to
179 our said court how you execute this writ, and have you then and there this writ.

Witness the Honorable Arnold Krekel, judge of the United States for the western district of Missouri, this 9th day of February, A. D. 1870.

Issued at office under the seal of said court, at the city of Jefferson, in said district, the day and year last above written.

ADAMS PEABODY, *Clerk.*

And the return of the United States marshall is as follows, to wit:

I hereby certify that I executed the within command or writ by leaving a copy of the same with the within-named Joseph E. Snyder on the 11th day of February, A. D. 1870, at the county of Jackson and western district of Missouri.

GEORGE SMITH,
U. S. Marshall, West. Dist. of Mo.,
By WM. M. SMITH, *Deputy.*

Filed Feb'y 12th, 1870.

ADAMS PEABODY, *Clerk.*

And afterwards, to wit, on Saturday, March 12th, 1870, the following further proceedings were had in the above-entitled cause, to wit:

In the Matter of JOSEPH E. SNYDER.

Vol. bank'cy. Case 136.

JOSEPH L. NORMAN, Petitioner,
vs.
JOSEPH E. SNYDER.

And now comes the parties hereto, by their respective attorneys, and thereupon said defendant has leave to file his answer herein on or before Thursday, March 17th, 1870.

And afterwards, on Thursday, March 17th, 1870, the following further proceedings were had, to wit:

In the Matter of JOSEPH E. SNYDER.

Volun. bankruptcy. Case No. 136.

JOSEPH L. NORMAN, Petition-,
vs.
JOSEPH E. SNYDER.

And now comes said defendant, Joseph E. Snyder, by his attorneys, Twitchell, Johnson and Budd, and files his answer herein, together with a certified copy of marginal entry of judgment; which said answer so filed on the 17th day of March, 1870, is in words and figures following, to wit:

In the District Court of the United States for the Western District of Missouri.

JAMES L. NORMAN
vs.
JOSEPH E. SNYDER.

This defendant, Joseph E. Snyder, reserving the benefit and advantage to himself of exception to the many errors and insufficiencies of the plaintiff's bill contained, for answer thereto says "he admits he was adjudged a bankrupt and received his discharge according to law by the order of this honorable court."

But defendant denies that at the time *of* said discharge was granted to defendant said E. Jaccard and Company held and was the owner of a just and lawful claim against respondent.

Defendant denies the existence of such claim payable under the law against said bankrupt's estate.

Defendant denies that said claim was proved against said bankrupt's estate.

And the defendant denies that the complainant is the owner and holder of a just and legal claim against respondent.

180 Defendant says that the judgement in complainant's bill described in favor of E. Jaccard and Company against this defendant for the sum therein stated was on or about the 5th day of April, 1861, assigned by E. Jaccard and Company to Henry R. Seegar, and a memorandum of the same and said assignment of said judgement was on said day entered upon the margin of the record of said judgement.

Defendant says that afterwards, to wit, on ——, defendant paid off and satisfied said judgement and fully settled the same with the said Henry R. Seegar, the said assignee thereof. A certified copy of said entry is herewith filed.

Defendant denies that at the time he filed his petition in bankruptcy he wilfully swore falsely in his affidavit annexed to Schedule "A," or that defendant wilfully refused to schedule any of his property for the purpose of preventing his said property being distributed as the bankrupt law provides.

Defendant denies that at the time he filed his petition and schedule aforesaid defendant had any interest in the land in plaintiff's petition described.

Defendant denies that at the time of his said discharge in bankruptcy he had any interest in said land of which said E. Jaccard and Company had no notice at the time of his said discharge.

And defendant denies that he wilfully concealed any of his property from the operation of said law.

But that in all things defendant honestly acted, and he denies all fraud and combination.

TWITCHELL, JOHNSON AND BUDD,
Attorneys for Defendant.

And afterwards, on Monday, March 21st, 1870, the following further entry appears of record, to wit:

In the Matter of JOSEPH E. SNYDER.

Vol. bank'cy. Case No. 136.

JOSEPH E. NORMAN
vs.
JOSEPH E. SNYDER.

And now comes the plaintiff, Joe L. Norman, by his attorneys, Samuel A. Vose and E. L. Edwards and Son, and by leave of court files replication herein.

The court here orders that all the depositions on file relating to pending issue be now opened.

In the Matter of JOSEPH E. SNYDER.

Vol. bankruptcy. Case No. 136.

JOSEPH L. NORMAN
vs.
JOSEPH E. SNYDER.

Petition.

It is ordered by the court here that Joseph V. Carnes, United States commissioner at Kansas City, western district of Missouri, be, and he is hereby, authorized and empowered to cause to come before him to be examined as witnesses in a cause pending in the district court of the United States for the western district of Missouri, wherein Joseph L. Norman is plaintiff and Joseph E. Snyder is defendant, such person or persons as shall be named by the plaintiff on Friday, the 25th day March, A. D. 1870, and from day to day thereafter until such examination shall have been completed.

And he is commanded to examine ever- such person under oath or affirmation first taken before him to testify the whole truth touching the matters in controversy between the said parties, and to reduce such examination to writing or cause the same to be done in his presence, and to be signed by said witnesses respect-
181 ively, to be read as evidence on behalf of plaintiff on the trial of said cause, and the same, duly certified under his hand, to return, with the writ herein, to this office without delay.

And the replication so filed on Monday, March 21st, 1870, is in words and figures as follows, to wit:

In the District Court of the United States, Western District of Missouri, March Term, 1870.

JOSEPH L. NORMAN, Complainant,
vs.
JOSEPH E. SNYDER, Defendant.

In bankruptcy.

The said complainant, James L. Norman, for replication to the answer of said Snyder says "that it is not true, as in the answer of said Snyder is stated, that the judgment of the said Jacard and Company *vs.* the said Snyder, therein referred to, was on or about the 5th day of April, 186–, or at any other time assigned by E. Jacard and Company to Henry R. Seegar, as is in answer stated.

And for further replication to the answer of the said defendant the said complainant says that the said defendant did not on the — day of —— or at any other time pay to the said Henry R. Seegar as assignee of said judgment the full amount thereof.

And for further replication to said answer the said complainant says the said pretended assignment of said judgment to the said Seegar by said Jaccard and Company and the entry thereof on

the margin of said judgment, if any such there is, is fraudulent and void, and this complainant hereby distinctly denies that the said Jacard and Company ever at any time assigned said judgment to the said Henry R. Seegar or that the said Henry R. Seegar has any interest therein or ever had any interest therein or was ever at any time authorized to receive payment of said judgment or any part thereof, or that there now is or ever was on file in the circuit court of county of Jackson any such assignment of said judgment as stated in said answer.

S. A. VOSE AND E. L. EDWARDS AND SON,
Attorneys for Complainant.

And afterwards, on March 26th, 1870, Saturday, the following further entry is of record:

JOSEPH L. NORMAN, Petitioner,
vs.
JOSEPH E. SNYDER, Defendant.

Deposition of Henry R. Seegar. Filed in Behalf of Joe L. Norman, Petitioner.

And the deposition as filed is as follows, to wit:

Depositions of witnesses produced, sworn, and examined on the 25th day of March, in the year of our Lord one thousand eight hundred and seventy, between the hours of eight (8) o'clock in the forenoon and six o'clock in the afternoon of that day, at the office of J. V. C. Karnes, United States commissioner, in Kansas City, in the county of Jackson and State of Missouri, before me, J. V. C. Karnes, United States commissioner of the district of Missouri, in the matter of Joseph E. Snyder, bankrupt, now depending in the United States district court, in the western district of Missouri.

182 HENRY R. SEEGAR, of lawful age, being produced, sworn, and examined on the part of Joseph L. Norman, complainant herein, deposes and says:

My name is Henry R. Seegar. I know Joe E. Snyder. I have had business transactions with him. I know a firm of J. Jaccard and Company. Their place of business is St. Louis.

I wrote down to Mr. Jaccard for release of judgement obtained by him against Joseph E. Snyder. I had bought a lot of Snyder, and this judgement was rendered against Snyder before I bought the lot. I sent and got a release of judgement so as to remove the incumbrance on the lot. I don't remember whether I paid E. Jaccard and Company any consideration for release of judgement or not.

There was another judgement, in favor of Schwartz, rendered against Snyder. This judgement was older than the one in favor of E. Jaccard and Company. The amount of the Swartz judgement

was about three hundred dollars ($300.00). I purchased this judgement from Swartz. I paid him about fifty (50) cents on the dollar for the Swartz judgement. I had the lot which I bought of Snyder sold under the Swartz judgement. I purchased the lot.

Ques. Was the release from E. Jaccard and Company of the judgement as to this lot before or after you purchased the lot at sheriff's sale?

Objected to because this evidence is matter of records.

I purchased the judgement of E. Jaccard and Company before lot was sold by sheriff.

I never asked E. Jaccard and Company to transfer to me any greater interest in the lot except the release thereon, and I have no knowledge that they did transfer to me any other interest. I only claimed the release of my lot from the judgement of E. Jaccard and Company. I never offered to sell the Jaccard judgement, nor did any one ever offer to buy it, nor did I consider that I had any other interest in the said judgement except as to the release of said lot. Snyder has never paid me anything on that judgment. I do not now claim any interest in the Jaccard judgement, said judgement having been rendered on the 18th day of September, 1858, for the amount and sum of three thousand nine hundred and three dollars and seventy cents ($3,903.70) in the circuit court of Jackson county, State of Missouri.

HENRY N. SEIGER.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

— — ——,
U. S. Com'r C't C't, Mo. District.

I, J. V. C. Karnes, U. S. commissioner of circuit court of Missouri district, do certify that in pursuance of the annexed commission came before me, at office, in Kansas City, Jackson county, Missouri, H. R. Seiger, who was sworn by me to testify the whole truth of his knowledge touching the matter in controversy aforesaid; that he was examined and his examination reduced to writing and subscribed by him in my presence on the day, between the hours, and at the place in that behalf first aforesaid, and his said deposition is herewith returned.

Given at office, in Kansas —, in the county of Jackson and State of Missouri, on this 28th day of March, 1875.

J. V. C. KARNES,
U. S. Commissioner C. C., Mo. District.

Filed March 26th, 1870.

ADAMS PEABODY, *Clerk.*

183 And afterwards, on March 30th, 1870, Wednesday, the following further entry appears of record, to wit:

In the Matter of JOSEPH E. SNYDER.

Vol. bankruptcy.

JOSEPH L. NORMAN
vs.
JOSEPH E. SNYDER. } 136.

Petition.

And now comes the plaintiff, by his attorneys, Samuel A. Vose and E. L. Edwards and Son, and also comes the said defendant, by his said attorneys, Johnson and Budd, and hereupon this cause is heard and is by the court here taken under advisement.

And afterwards, on Monday, April 4th, 1870, the following further entry appears of record in the above and foregoing cause as follows to wit:

In the Matter of JOSEPH E. SNYDER.

Vol. bankruptcy.

JOSEPH L. NORMAN
vs.
JOSEPH E. SNYDER. } Case No. 136.

Petition.

It having come to the knowledge of the court since the discharge of the bankrupt in this case that there is property of the bankrupt, a part of his estate, which has not been administered and disposed of, it is therefore ordered that Samuel A. Vose, assignee herein, be, and he is hereby, directed to proceed according to law to ascertain whether any such property as aforesaid exists and remains undisposed of and proceed to dispose of the same according to law.

It is further ordered that the clerk of this court transmit a copy of this order to Samuel A. Vose, the said assignee.

And afterwards, on Saturday, February 11th, 1871, the following further entry appears of record, to wit:

In the Matter of JOSEPH E. SNYDER. Case No. 136.

Samuel A. Vose, the assignee herein, files his resignation as such assignee.

It is hereby ordered by the judge that the resignation of Samuel A. Vose as assignee herein be, and the same is hereby, accepted, and that Henry N. Ess, of Kansas City, Missouri, be, and he is hereby, appointed assignee of said bankrupt's estate, vice Samuel A. Vose, resigned as aforesaid.

It is further ordered that the said Henry N. Ess execute and file a bond in the sum of one thousand dollars ($1,000), conditioned for the faithful discharge of his duties as such assignee.

And it is further ordered that said Samuel A. Vose, the former

assignee herein, convey to the said assignee, Henry N. Ess, all the estate and effects of the aforesaid bankrupt according to law.

Now, the said resignation of said Samuel A. Vose, assignee, is in words and figures as follows, to wit:

Samuel A. Vose, assignee, appears before — judge and tenders his resignation.

In obedience to the order of Saturday, February 11th, 1870, Henry N. Ess files bond in the sum of one thousand dollars ($1,000) on Thursday, February 16th, 1871.

And on Thursday, February 16th, 1871, the following further entry appears of record, to wit:

In the Matter of JOSEPH E. SNYDER. Case 136.

Henry N. Ess, appointed assignee herein by the judge, vice Samuel A. Vose, resigned, accepts said trust.

184 Said assignee files bond herein in the sum of one thousand dollars ($1,000), with two sureties, which is by the judge here approved.

Which said bond so filed and approved is in words and figures as follows, to wit:

In the Circuit Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

Know all men by these presents that we, Henry N. Ess, Luis K. Thatcher, and J. V. C. Karnes, of Kansas City, in the county of Jackson, in the western district of Missouri, are held and firmly bound to the said United States in the just and full sum of one thousand dollars ($1,000).

To the payment whereof, well and truly to be made, we do bind ourselves, our and each of our heirs, executors, and administrators. Signed, sealed, and delivered this 15th day of February, 1871.

The said Henry N. Ess having been on the 11th day of February, 1871, by order of the district court of the United States for the western district of Missouri, in bankruptcy, appointed assignee of the estate of Joseph E. Snyder, a bankrupt, this bond is executed pursuant to the thirteenth (13th) section of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867, and is conditioned for the due and faithful discharge of all his duties by the said Henry N. Ess as such assignee and in compliance with the orders and di-

rections of the court in the matter of bankruptcy of the said Joseph E. Snyder.

HENRY N. ESS. [L. S.]
L. K. THATCHER. [L. S.]
J. V. C. KARNES. [L. S.]

Signed, sealed, and delivered in presence of—
WM. M. SMITH.

And afterwards, to wit, on Wednesday, June 14th, 1871, the following further entry appears of record in the above and foregoing cause, to wit:

In the Matter of JOSEPH E. SNYDER, Bankrupt. Case 136.

It appearing to the court that there is property herein which was not scheduled by the said bankrupt and which has not been administered upon in making settlement of the estate of said bankrupt, it is ordered that the case be reinstated upon the docket as a case in bankruptcy.

And that Henry N. Ess, the assignee herein, file a complete schedule of all the property belonging to said estate yet remaining undisposed of.

And afterwards, on Thursday, August 3rd, 1871, the following further entry appears of record, to wit:

In the Matter of JOSEPH E. SNYDER, Bankrupt.

JOSEPH L. NORMAN
vs.
JOSEPH E. SNYDER. } Case 136.

Plaintiff appears by attorneys, E. L. Edwards and Son, and hereupon the court, after having had the cause under advisement and the premises being seen and fully understood, doth now *h*-judge that the order for final discharge of said bankrupt heretofore made be, and the same is hereby, set aside and annulled.

The claim of Jo. P. Harrison, filed on February 28th, 1871, *as* by the judge here allowed for the sum of seven thousand and nine dollars and ten cents ($7,009.10).

185 And afterwards, on Saturday, August 19th, 1871, the following further entry appears of record, to wit:

In the Matter of JOSEPH E. SNYDER, Bankrupt. Case 136.

Henry N. Ess, the assignee herein, files a schedule of property belonging to the estate of Joseph E. Snyder, bankrupt, which has come to his knowledge.

Said assignee files application for authority to sell certain real estate herein at public sale.

Said schedule of property so filed on Saturday, August 19th, 1871, is in words and figures as follows, to wit:

In the District Court of the United States in the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

The following is a full and complete description of all the real estate of said bankrupt not heretofore disposed of by the assignee:

No personal property found.

The said bankrupt owned the following-described real estate, situated in Kansas City, Wyandotte county, Kansas, and bounded as follows:

Beginning at a point north twenty-eight and one-half (28½) degrees west, distant thirty-six hundred and four (3,604) feet and six (6) inches from the southeast corner of section eleven (11), township eleven (11) south, of range twenty-five (25) east, of the sixth (6th) principal meridian, in the State of Kansas, on the northwardly line of James street extended, as shown by the plat of Kansas City, Kansas, now on file in the office of the register of deeds, in Wyandotte county, Kansas, on page nine (9) of the Book of Plats, filed on the third day of May, 1869, by D. E. James *et al.*—

Thence south sixty-one and one-half (61½) degrees west six hundred and forty (640) feet and two (2) inches; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty (640) feet two (2) inches to the said northwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west on said northwardly line of James street extended three hundred (300) feet to the beginning, containing four (4) acres, more or less.

And also a piece of land described as follows:

Beginning at the same point as above described, thence north sixty-one and one-half (61½) degrees east to the Missouri river; thence down along said river south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the northwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west three hundred (300) feet to the beginning, containing two (2) acres, more or less.

The above is all the property, real or personal, of the said Joseph E. Snyder, bankrupt, which has come to my knowledge or notice.

HENRY N. ESS, *Assignee.*

And the application for order to sell real estate is in words and figures as follows, to wit:

186 In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

This day comes Henry N. Ess, assignee of the estate of Joseph E. Snyder, bankrupt, and moves the court for an order to sell the real

estate belonging to said estate of said bankrupt at public sale on the premises, for cash, said land to be appraised according to the rules of this court. Said assignee prays for an order to advertise said sale in the "Wyandotte Gazette," Wyandotte county, Kansas, and in the "Kansas City Journal of Commerce," three (3) insertions in the Wyandotte Weekly Gazette and eighteen (18) insertions in the Kansas City Daily Journal of Commerce, in Kansas City, Missouri.

After said sale is made by said assignee to be subject to the confirmation of said court and to such other restrictions and regulations as may be deemed by the court for the best interest of all concerned.

HENRY N. ESS,
Assignee of Bankrupt Estate of Joseph E. Snyder.

And afterwards, on Thursday, August 24th, 1871, the following further entry appears of record, to wit:

In the Matter of JOSEPH E. SNYDER, Bankrupt. Case 136.

Henry N. Ess, the assignee, files an amended application for authority to sell certain real estate herein described *therein* at public sale and to have the same approved.

Said amended application to sell real estate, filed on Thursday, August 24th, 1871, is in words and figures as follows, to wit:

In the United States District Court in and for the Western District of Missouri. In Bankruptcy.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

This day comes Henry N. Ess, assignee of said estate Joseph E. Snyder, bankrupt, and moves the court for an order to have the following real estate of said bankrupt appraised, described as follows, to wit:

Beginning at a point north twenty-eight and one-half (28½) degrees west, distant thirty-six hundred and four (3,604) feet and six (6) inches from the southeast corner of section eleven (11), township eleven (11) south, of range twenty-five (25) east, of the sixth (6th) principal meridian, in Wyandotte county, in the State of Kansas, on the northwardly line of James street extended, as shown by the recorded plat of Kansas City, of Kansas, now on file in the office of the register of deeds, in Wyandotte county, Kansas, on page nine (9) of the Book of Plats, filed on the 3rd day of May, A. D. 1869, by David E. James and others, thence south sixty-one and one-half (61½) degrees west six hundred and forty (640) feet and two (2) inches; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty (640) feet two (2) inches to the said northwardly line of James street extended; thence north twenty-eight and one-half (28½) degrees west on said northwardly line of James street three hundred (300) feet to the place of beginning, containing four (4) acres, more or less.

And also a piece of land described as follows:

Beginning at the same point as above described, thence north sixty-one and one-half (61½) degrees east to the Missouri river; thence down along said river south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the northwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west three hundred (300) feet to the beginning, containing two (2) acres, more or less—

Both said tracts being in Wyandotte county, Kansas, and
187 after its appraisal, according to the order of this court, said assignee prays for an order to sell said real estate to the highest bidder, for cash, said sale to be on the premises, to be advertised in the "Kansas City Daily Journal of Commerce" and in the "Wyandotte Gazette," sale to be subject to the confirmation of this court, and with such other restrictions and regulations as the court may deem for the best interest of all concerned.

HENRY N. ESS,
Assignee of Bankrupt Estate of Joseph E. Snyder.

And afterwards, on Friday, August 25th, 1871, the following further entry appears of record in the above-entitled cause, to wit:

In the Matter of the Estate of JOSEPH E. SNYDER, Bankrupt.
Case 136.

Upon application of Henry N. Ess, assignee of the estate and effects of the bankrupt herein, filed on August 24th, 1871, it is ordered that certain real estate belonging to the estate of said bankrupt and described in said application as follows, to wit:

Beginning at a point north twenty-eight and one-half (28½) degrees west distant thirty-six hundred and four (3,604) feet and six (6) inches from the southeast corner of section number eleven (11), township eleven (11) south, of range twenty-five (25) east, of the sixth principal meridian, in Wyandotte county, State of Kansas, on the northwardly line of James street extended, as shown by the recorded plat of Kansas City, Kansas, now on file in the office of the register of deeds in Wyandotte county, Kansas, on page nine (9) of the Book of Plats filed on the 3rd day of May, 1869, by David E. James and others, thence south sixty-one and one-half (61½) degrees west six hundred and forty (640) feet and two (2) inches; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty (640) feet and two (2) inches to the said northwardly line of James street extended; thence north twenty-eight and one-half (28½) degrees west on said northwardly line of James street extended three hundred (300) feet to the place of beginning, containing four (4) acres, more or less.

Also a piece of land described as follows:

Beginning at the same point as above described, thence north sixty-one and one-half (61½) degrees east to the Missouri river;

thence down along said river south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hunderd and thirty-one (231) feet to the northwardly line of James-street extended; thence north twenty-eight and one-half (28½) degrees west three hundred (300) feet to the beginning, containing two (2) acres, more or less, both of said tracts of land being in Wyandotte county, Kansas, be appraised according to law, and the said assignee sell the same at public or private sale, as he may deem for the best interest of the creditors, and in case said property be sold at public sale to be advertised in the Kansas City Daily Journal of Commerce and the Wyandotte Gazette.

It is further ordered that said assignee attach a copy of the city assessment of said property for the year 1870 to the appraisement thereof and return the same to this court.

And it is further ordered that said sale be reported to this court for its approval.

And afterwards, on Thursday, October 12th, 1871, the following further entry appears of record, to wit:

In the Matter of JOSEPH E. SNYDER, Bankrupt. Case 136.

Henry N. Ess, assignee herein, files a report of the sale of — to B. Judd of certain real estate belonging to the estate of said bankrupt, situate in Kansas City, Kansas, together with the assess-
188 ment of said property for State and county purposes.

And the report of sale is filed on Thursday, October 12th, 1871, and the exhibits thereto attached are in words and figures as follows, to wit:

In the District Court of the United States for the District of Kansas.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

Henry N. Ess, assignee of the above-named bankrupt, begs leave to report the following sale of real estate of said bankrupt made by him:

I first caused said real estate to be appraised by W. B. Newman, J. S. Stockton, and Geo. R. Todd, resident householders of Wyandotte, Wyandotte county, Kansas, and their appraisement is hereto attached and marked Exhibit "A."

Which said exhibit is in words and figures as follows, to wit:

IN THE UNITED STATES OF AMERICA:

In the United States District Court for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

STATE OF KANSAS, } ss:
County of Wyandotte, }

M. B. Newman, J. S. Stockton, and Geo. R. Todd, being first duly sworn, say that they are disinterested citizens and householders of said county and State.

That they will fairly and impartially, upon actual view, appraise the real estate to them shown by H. N. Ess as assignee of said estate, and will make return of the same.

M. B. NEWMAN.
J. S. STOCKTON.
GEO. R. TODD.

Subscribed in my presence and sworn to before me this 11th day of September, A. D. 1871.

W. J. BUCHAN,
[L. S.] *Notary Public.*

To Henry N. Ess, assignee of the estate of Joseph E. Snyder:

We, the undersigned, upon our several composed oaths hereby report that we have examined and appraised the following-described real estate situated in Wyandotte county, Kansas, viz:

Beginning at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25) south, east of the sixth (6th) principal meridian, on the northwardly line of James street extended as shown by the plat of Kansas City, Kansas, on file in the office of the register of deeds in Wyandotte county, Kansas, on page nine (9) of the Book of Plats, filed on the third (3rd) day of May, 1869, by David E. James and others, thence south sixty-one and one-half (61½) degrees west six hundred and forty and two-twelfth- ($640\frac{2}{12}$) feet; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet to the said northwardly line of James street extended; thence north twenty-eight and one-half (28½) degrees west on said northwardly line of James street extended three hundred (300) feet to the place of beginning, said to contain four (4) acres; we appraise the same on the basis of four (4) acres in all at eight hundred dollars ($800.00) per acre,

Also as above, beginning at the same point and thence north sixty-one and one-half (61½) degrees east to the Missouri river; thence down along said river south twenty-eight and one-half (28½)

degrees east three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231)
189 feet to the northwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west three hundred (300) feet to the beginning, said to contain two (2) acres; we appraise the same on the basis of two (2) acres at nine hundred dollars ($900) per acre, and in the aggregate amounting to five thousand dollars ($5,000).

Wyandotte county, Kansas, September 11th, 1871.

W. B. NEWMAN.
GEO. R. TODD.
J. S. STOCKTON.

The assessment of said property for State and county purposes is herewith returned, marked Exhibit "B."

Which assessment marked Exhibit "B" is in words and figures as follows, to wit:

STATE OF KANSAS, }
County of Wyandotte, } ss:

OFFICE OF THE CLERK OF THE COUNTY OF WYANDOTTE,
WYANDOTTE CITY, KANSAS.

I, Patrick J. Kelly, clerk of the county of Wyandotte and State of Kansas aforesaid, do hereby certify that the following lands and tenements situate in said county and State were assessed for the year 1871 as follows, as appears from the assessment-roll on file in my office, viz:

Beginning at a point north twenty-eight and one-half (28½) degrees west distant thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11) south, range twenty-five (25) east, of the sixth (6th) principal meridian in Wyandotte county, Kansas, on the northwardly line of James street extended, as shown by the plat of Kansas City, Kansas, now on file in the register of deeds' office of Wyandotte county, Kansas, on page nine (9) of the Book of Plats filed on the 3rd day of May, 1869, by David E. James and others, thence south sixty-one and one-half (61½) degrees west six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet to the said northwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west on said northwardly line of James street three hundred (300) feet to the place of beginning, containing four (4) acres, at the rate of three hundred (300) dollars an acre.

Also beginning at the same point as above described, thence north sixty-one and one-half degrees east to the Missouri river; thence down along said river south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to

the northwardly line of James street extended; thence north twenty-eight and one-half (28½) degrees west three hundred (300) feet to the beginning, containing two (2) acres, at the rate of three hundred dollars ($300.00) per acre.

I further certify that the above-described land is not within the limits of an incorporated town or city having a numerical government, but are situated in Shawnee township, in said county.

Given under my hand and the seal of the board of county commissioners of said county, at office, this 7th day of September, A. D. 1871.

[L. S.] J. P. KELLY,
County Clerk.

190 Showing also that said real estate is not within the limits of any incorporated city or town.

I deemed it best for the interest of said estate to sell at private sale; and on Saturday, September 30th, 1871, I sold said real estate as follows, to wit:

Beginning at a point north twenty-eight and one-half (28½) degrees west distant thirty-six hundred and four (3,604) feet and six (6) inches from the southeast corner of section eleven (11), township eleven (11) south, of range twenty-five (25) east, of the sixth (6th) principal meridian in Wyandotte county, in the State of Kansas, on the northwardly line of James street extended, as shown by the plat of Kansas City, Kansas, on file in the office of the register of deeds in Wyandotte county, Kansas, on page nine (9) of the Book of Plats, filed on the 3rd day of May, 1869, by D. E. James and others, thence south sixty-one and one-half (61½) degrees west six hundred and forty (640) feet and two (2) inches; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty (640) feet two (2) inches to the said northwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west on said northwardly line of James street three hundred (300) feet to the place of beginning, containing four (4) acres, more or less, to B. Judd, at and for the sum of three thousand three hundred and twenty dollars ($3,320) cash, and the following, to wit:

Beginning at the same point as above described, thence north sixty-one and one-half (61½) degrees east to the Missouri river; thence down along said river south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the northwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west three hundred (300) feet to the beginning, containing two (2) acres, more or less, to B. Judd, at and for the sum of eighteen hundred dollars ($1,800) cash.

The above sales were made for cash, subject to the approval of the court. I believe the above sales to be for the full value of the property.

All which is respectfully submitted.

HENRY N. ESS,
Assignee of Bankrupt Estate of Joseph E. Snyder.

And afterwards, on Saturday, October 14th, 1871, the following further entry appears of record in the above and foregoing cause, as follows, to wit:

In the Matter of JOSEPH E. SNYDER, Bankrupt.

Henry N. Ess, the assignee herein, having on October 12th, 1871, filed a report of the sale to B. Judd of certain real estate belonging to the estate of said bankrupt, situated in Wyandotte county, Kansas, said report is by the court here approved and said assignee is ordered to make a deed thereof to the purchaser aforesaid.

And afterwards, on November 16th (Thursday), 1871, the following further entry appears of record, to wit:

In the Matter of the Estate of JOSEPH E. SNYDER, Bankrupt.

E. L. Edwards and Son, attorneys, file their account against the estate of said bankrupt *in* services rendered in procuring an order setting aside the discharge of said bankrupt and having claim of creditors who petitioned to have the discharge of said bankrupt set aside allowed; also for general services rendered Samuel A. Vose, the former assignee herein, and Henry N. Ess, the present assignee, which account is by the judge here allowed for the sum of three hundred dollars ($300), and Henry N. Ess, the present assignee aforesaid, is ordered to pay the same as costs herein.

191 And the account so filed is in words and figures as follows, to wit:

The estate of Joseph E. Snyder to E. L. Edwards and Son, Dr.

To fee for services rendered in setting aside discharge of bankrupt and having claim of creditors allowed who moved to set aside said discharge and for service rendered Vose and Ess, assignees in the case	$300 00

And afterwards, on Friday, May 17th, 1872, the following further entry appears of record, to wit:

In the Matter of JOSEPH E. SNYDER, Bankrupt.

Adams Peabody, late clerk of the court, files his account against the estate of said bankrupt in the sum of twenty-four dollars and twenty-five hundredths ($24.25), which is by the judge here approved, and Henry N. Ess, the assignee herein, is directed to pay the same.

And the account of Adams Peabody, late clerk, is in words and figures as follows, to wit:

Fees of Adams Peabody, Clerk of the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt. Case 136.

Voluntary bankruptcy.

1870.			
Feb'ry	9th.	To filing one paper	10
		To 2 copies of pet. of L. Traber	1 80
		To summons, 1.00, and copy of same	1 30
	12th.	To filing summons, .10; au't'g return, .15	25
May	17th.	To filing 2 returns	20
"	21st.	To filing two returns	20
May	26th.	To filing one return	10
April	4th.	Or. to see if any proof remained	45
1871.			
Feb'y	11th.	To app'g app't ass.	71
"	"	" " " "	71
		To notification of app't of ass.	61
Feb'y	16th.	To filing two papers	20
	21st.	To prop. stating case	50
	28th.	To filing one paper	10
Mar.	2nd.	To ord. notifying ass. of pres't of claim	41
Apr.	29th.	To ord. of ass. to ex. claim	51
May	18th.	To filing statement of assignee	10
June	14th.	To order reinstating case	61
Aug.	3rd.	To order setting aside discharge	51
	19th.	To filing schedule of property	10
		To petition for sale of real estate	10
	24th.	To filing amend. pet. for sale of r. e.	10
	25th.	To copy of order to sell	1 04
Oct.	12th.	To filing report sale of real estate	10
	14th.	Copy of order app'g report	51
Nov.	16th.	To copy ord. for ass. to pay E. L. E. & Son	61
		To filing E. L. E. & Son's account	10
		To ½ docket fee	50
		To 78 fol. in C. B. & C. R.	11 70
			$24 23

192 In the Circuit Court of Jackson County, Missouri.

Be it remembered that at the September term, 1868, of our circuit court in and for the 6th day of said term the following, among other, proceedings were had, to wit:

EUGENE JACCARD, AUGUSTUS S. MERNARD, and D. CONSTANCE JACCARD
vs.
JOSEPH EMILE SNYDER and JOSEPH GODDARD.

Petition and Attachment.

Now, on this day, comes the plaintiffs aforesaid, by their attorney, and, the said defendants failing to appear, it is ordered by the court that the interlocutory judgment rendered herein against the defendants be, and the same hereby is, made final, and, the plaintiffs' demand being unliquidated, it is ordered that the enquiry of damages be awarded herein.

And the plaintiffs not requiring a jury to assess their damages herein and all and singular the premises are by them submitted to the court, which being by the court here seen and heard and fully enquired into, the court doth assess the damages of said plaintiffs at the sum of three thousand nine hundred and three dollars and seventy cents ($3,903.70) by reason of the non-performance of the said defendants.

It is, therefore, considered by the court here that the said plaintiffs recover against the said defendants the damages aforesaid so assessed by the court as aforesaid, together with their costs and charges in the behalf laid out and expended, and that they have thereof execution.

And it appearing to the court that the money arising from the sale of the property herein is still in the hands of the sheriff of this county, it is ordered that the same be paid over or so much thereof as will satisfy their judgement.

Interest at six (6) per cent.

And on the seventeenth (17th) day of January, A. D. 1871, a power of attorney — executed by said plaintiffs authorizing one John Y. Leveridge to assign, set over, and transfer said judgement to Joseph L. Norman, now filed in my office and attached to the record of said judgement; which power of attorney is in words and figures as follows, to wit:

"*Power of Attorney.*"

Know all men by these presents that we, Eugene Jaccard, D. C. Jaccard, and A. S. Mernard, do by these presents make, constitute, and appoint John V. Leveridge, of the city of Kansas, Missouri, our true and lawful attorney for us and in our name and stead to assign, transfer, and set over to Joseph L. Norman, of said Kansas City, a certain judgement rendered *by* against one Joseph E. Snyder in the Jackson county, Missouri, circuit court on the 18th day of September, 1858, for the sum of three thousand nine hundred and three dollars and seventy cents ($3,903.70), said judgement having been heretofore sold by Eugene Jaccard and Company to said Joseph L. Norman and transferred to him in writing by said firm.

Hereby ratifying and confirming any and all things said attorney may lawfully do in the premises.

Witness our hands and seals this seventh day of January, 1871.

[Stamp.]
[Stamp.]

EUGENE JACCARD. [SEAL.]
A. S. MERNOD. [SEAL.]
D. C. JACCARD. [SEAL.]

193 STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that Eugene Jaccard, D. C. Jaccard, and A. S. Mernod, who are personally known to the undersigned, a notary public within and for said county, to be the persons whose names are subscribed to the foregoing power of attorney as parties thereto, this day appeared before me and acknowledged that they executed and delivered the same as their voluntary act and deed for the uses and purposes therein mentioned and contained.

Given under my hand and notarial seal this seventh day of January, 1871.

[SEAL.] JOSEPH H. TURNER,
Notary Public.

And on the margin of said record of said judgment aforesaid appears an assignment in words and figures as follows, to wit:

"We, Eugene Jaccard, A. S. Mernod, and D. C. Jaccard, by John G. Leveridge, our attorney-in-fact, for value received, do hereby assign, transfer, and set over to Joseph L. Norman, of Kansas City, Missouri, all our right, title, and interest in and to this judgment.

This 17th day of January, A. D. 1871.

EUGENE JACCARD,
A. S. MERNOD,
D. C. JACCARD,
By JOHN G. LEVERIDGE,
Their Attorney-in-Fact.

Attest: WALLACE LAWS, *Clerk.*"

And on the margin of the record of said judgement there appears another assignment, which is in words and figures as follows, to wit:

"For value received I hereby assign, transfer, and set over to Jno. P. Harrison, of Kansas City, Missouri, all my right, title, and interest in and to this judgment.

This 17th day of January, 1871.

JOSEPH L. NORMAN.

Attest: WALLACE LAWS, *Clerk.*"

STATE OF MISSOURI, } ss:
Jackson County, }

I, Wallace Laws, clerk of the circuit court within and for the county of Jackson and State of Missouri aforesaid, hereby certify

that the foregoing is a true and perfect transcript of the judgment in the case of Eugene Jaccard, Augustus S. Mernod, and D. Constance Jaccard against Joseph Emile Snyder and Joseph Goddard, together with the power of attorney executed by the plaintiffs to John G. Leveridge, and also the assignment of said juegment to J. L. Norman by said Leveridge, attorney-in-fact for said plaintiffs, and also the assignment of Joseph L. Norman to John P. Harrison, as the same remains of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Independence, Missouri, this 19th day of January, A. D. 1871.

[SEAL.] WALLACE LAWS, *Clerk*,
By JAMES E. McHENRY, *D. C.*

194 In the District Court of the United States for the Western District of Missouri.

In the Matter of Jos. E. SNYDER, Bankrupt.

In bankruptcy.

EASTERN DISTRICT OF MISSOURI, *ss:*

At St. Louis, Missouri, on the 6th day of February, A. D. 1871, before me, Lucius Eaton, U. S. commissioner, district of Missouri, came Eugene Jaccard, at St. Louis, Missouri, and made oath and says that the said Joseph E. Snyder, the person against whom a petition for adjudication of bankruptcy has been filed, at and before the filing of the said petition was justly and truly indebted to deponent and A. S. Murnod and D. C. Jaccard, late doing business at St. Louis, Missouri, under the name and style of E. Jaccard and Company, in the sum of six thousand six hundred and fifty dollars and fifty cents ($6,650.50), the original consideration of said debt being for goods, wares, and merchandise (settled and evidenced by notes) and now in judgment sold and delivered to the said Joseph E. Snyder at his request, and said debt is evidenced and more fully set forth in the transcript hereto annexed and marked Exhibit "A" and made a part hereof, and deponent states that a judgment has been rendered on said debt; that said sum includes interest to the 5th day of February, A. D. 1870, at the rate of six per cent. per annum, for which said total sum of six thousand six hundred and fifty dollars and fifty cents ($6,650.50) or any part thereof this deponent says that he has not nor has any person by his order or at his request or to this deponent's knowledge or belief for their use had or received any manner of satisfaction or security whatsoever from the said Joseph E. Snyder or from any other person in his behalf.

And this deponent further says that the said claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867; that no bargain or agreement, express or implied, has been made or

entered into by or on behalf of this deponent's firm to sell, transfer, or dispose of said claim or any part thereof against said bankrupt or to take or receive, directly or indirectly, any money, property, or consideration whatsoever whereby the vote of the deponent's firm for assignee or any action on the part of this deponent's firm or of any other person in the proceedings under said act has been or is or shall be in any way affected or influenced or controlled.

EUGENE JACCARD, *Dep. Cr.*

Subscribed and sworn to before me this 6th day of February, 1871, and I certify that this proof is to me satisfactory.

LUCIAN EATON,
U. S. Commissioner, Dist. of Mo.

Filed February 28th, 1871, at 3.30 p. m.

ADAMS PEABODY, *Clerk.*

195 In the District Court of the United States for the Western District of Missouri.

In the Matter of J. E. SNYDER, Bankrupt.

In bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

At Kansas City, Missouri, on the 14th day of February, 1871, before me, J. V. C. Karnes, United States commissioner, district of Missouri, came J. L. Norman, of Kansas City, Missouri, and made oath *that* says that the said J. E. Snyder, the person against whom a petition for adjudication of bankruptcy has been filed, was, on the 5th day of February, 1870, justly and truly indebted to deponent, J. L. Norman, doing business in Kansas City, Missouri, in the sum of six thousand six hundred and fifty dollars and fifty cents ($6,650.50), the original consideration of said debt being for goods, wares, and merchandise settled and evidenced by notes now in judgement sold and delivered to the said J. E. Snyder at his request, and said debt is evidenced and more fully set forth in the transcript, marked Exhibit "A," and made a part hereof; and deponent states that a judgement has been recovered on said debt; that said sum includes interest to the fifth day of February, A. D. 1870, at rate of six (6) per cent. per annum, for which *sum* total sum of six thousand and six hundred and fifty dollars and fifty cents ($6,650.50) or any part thereof this deponent says he has not nor has any person for or by his order or to this deponent's knowledge or belief for his use had or received any manner of satisfaction or security whatsoever from the said J. E. Snyder or from any other person in his behalf.

And this deponent further says that said claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867; that no

bargain or agreement, express or implied, has been made or entered into by or in behalf of this deponent to sell, transfer, or dispose of said claim or any part thereof against said bankrupt — to take or receive, directly or indirectly, any money or property or consideration whatever whereby the vote of this deponent for assignee or any action on the part of this deponent or of any other person in the proceeding under said act has been or is or shall be in any way affected, influenced, or controlled.

JOSEPH L. NORMAN, *Dep.* Ler.

Subscribed and sworn to before me this 14th day of February, A. D. 1871, and I certify that this proof is to me satisfactory.

J. V. C. KARNES,
U. S. Com'r, District of Missouri.

Filed February 28th, 1871, at 3.30 p. m.

ADAMS PEABODY, *Clerk.*

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

At Kansas City, Missouri, on the 14th day of February, 1871, before me, J. V. C. Karnes, United States commissioner of Missouri, came John P. Morrison, of Kansas City, Missouri, and made oath and says—

That the said J. E. Snyder, the person against whom a petition for adjudication of bankruptcy has been filed at and on the 4th day of January, 1871, was *still* is now justly and truly indebted to the deponent, J. P. Harrison, doing business at Kansas City under the name and style of J. P. Harrison, in the sum of six thousand seven hundred and eighty-two dollars and ninety-five cents
196 ($6,782.95), the original consideration of said debt being for goods, wares, and merchandise (settled and evidenced by notes) *and* now in judgement sold and delivered to said J. E. Snyder at his request, and said debt is evidenced and more fully set forth in the transcript hereto annexed and marked Exhibit "A" and made a part hereof, and deponent states that a judgement has been recovered on said debt; that said sum includes interest *on* the 4th day of January, A. D. 1871, at the rate of six (6) per cent. per annum, for which said total sum of six thousand seven hundred and eighty-two dollars and ninety-five cents ($6,782.95) or any part thereof—

This deponent says that he has not nor has any person by his order or to his, deponent's, knowledge or *behalf* for his own use had or received any manner of satisfaction or security whatsoever.

And this deponent further says that the said claim was not pro-

cured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867; that no bargain, express or implied, has been made or entered into by or in behalf of this deponent to sell, transfer, or dispose of said claim or any part thereof as against said bankrupt or to take or receive, directly or indirectly, any money, property, or consideration whatsoever whereby the vote of this deponent for assignee or any action of the part of this deponent or any other person in the proceedings under said act has been, is, or shall be in any manner or way affected or influenced or controlled.

J. P. HARRISON, *Dep.* Ler.

Subscribed and sworn to before me this 14th day of February, 1871, and I certify that this proof is to me satisfactory.

J. V. C. KARNES,
U. S. Com'r, District of Mo.

Filed February 28th, 1871, at 3.30 p. m.

ADAMS PEABODY, *Clerk.*

Seven thousand and nine and $\frac{10}{100}$ dollars allowed on this claimant's —, J. P. Harrison.
Aug. 3, '71.

A. KREKEL, *Judge.*

UNITED STATES OF AMERICA, }
Western District of Missouri. }

Be it remembered that on this 19th day of March, in the year of our Lord one thousand eight hundred and seventy, I, Lucius Eaton, a commissioner duly appointed by the circuit court of the United States for the district of Missouri under and by virtue of the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil cases depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of the affidavits and bail in civil cases depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States, passed September 24th, 1789," and also register in bankruptcy for the eastern district of Missouri, did call and cause to be and personally appear before me, at my office, at the city of St. Louis, in said district, in the State of Missouri, Eugene Jaccard to testify and the truth say on the part and behalf of the plaintiff in a certain suit or matter in controversy now pending and undetermined in the district court of the United States for the western district of Missouri, at Jefferson City, Missouri, wherein J. L. Norman is plaintiff and J. E. Snyder is defendant.

And said EUGENE JACCARD, being about the age of fifty-five (55) years and having been by me first cautioned and sworn to testify

the truth, the whole truth, and nothing but the truth in the
197 matter of controversy aforesaid, I did carefully examine the aforesaid Eugene Jaccard and he did thereupon depose, testify, and say as follows:

Examination by Mr. S. A. VOSE:

Quest. What is the style of your firm?

A. E. Jaccard and Company.

Quest. Do you know J. L. Norman or have you ever had any business transactions with him?

A. Well, I don't know him, but I had transferred a claim I had with him.

Quest. When did you transfer that claim?

A. I think it was about two months ago; I don't remember the exact time; I think it is between six (6) weeks and two (2) months; I am not sure.

Quest. What was the nature of that claim?

A. It was notes; it was for goods that we sold him for which he had given notes.

Quest. Was it notes or judgement that you transferred?

A. Yes, sir; there was a judgement.

Quest. You transferred notes and judgement, too?

A. Yes, sir.

Q. More than one judgement?

A. Yes, sir; I think there was; I believe there was only one before we got judgement for the principal account; It is a long time ago. I have forgotten; I think there was only one judgement. I believe *the* there was an account.

Q. Then you transferred to him a judgement and notes?

A. Yes, sir.

Q. These were the property of E. Jaccard and Company?

A. Yes, sir.

Q. Did you have any knowledge—in the first place, had you ever sold, transferred, or assigned these judgements and notes to any party before assigning them to Norman or did any one for you?

A. No, sir.

Quest. You never authorized it?

A. No, sir.

Q. You were the legal owner and holder of these notes and judgement at the time that you transferred them to Norman?

A. Yes, sir.

Quest. You had notice Snyder was in bankruptcy, did you not? You knew of his bankruptcy?

A. Yes, sir.

Q. Did you have any knowledge of Snyder's financial ability or whether he had any property or not?

A. No, sir; I had no knowledge of it.

Q. You had no knowledge of any property further than what he scheduled?

A. Yes, sir.

Q. Didn't you know anything about it?

A. We received a notice that he was in bankruptcy, and that's all.

Q. And that's all you knew about it? You didn't know he had any property only what was embraced in his schedule annexed to his petition in bankruptcy?

A. No, sir.

Cross-examined by defendant's counsel.

Examination by Mr. S. N. TAYLOR:

Q. In the year 1858 or thereabouts you obtained a judgement against Snyder—a judgement—did you not, at Independence?

A. Yes, sir; the date I have forgotten.

Q. Well, about ten (10) or eleven (11) years ago?

A. Yes.

198 Q. You got a judgement against Snyder at Independence, Missouri, for three thousand nine hundred and three dollars and seventy cents ($3,903.70)?

A. Yes, sir; I think it was the amount.

Q. Subsequently you assigned that judgement to Henry R. Seegar, did you not?

A. I don't know.

Q. You transferred the judgement to some person, did you not, in 1860 or 1861?

A. I have forgotten; I have no recollection of having done it.

Q. You had a partner, did you not?

A. When?

Q. In 1858.

A. Yes, sir; I had a partner in 1858; I had two partners.

Q. The judgement that was obtained at Independence against Snyder was in favor of the copartnership that then existed?

A. Yes, sir; but when I bought the claim of my two partners, in 1864, I retained all the debts of the old house.

Q. Now, Mr. Jaccard, do you swear that that judgement was never transferred by any member of the firm to Henry R. Seegar?

A. Well, I have no knowledge of it.

Q. But it might have been so transferred to Mr. Seegar?

A. I don't think they would have transferred the judgement without my knowledge.

Q. It may have been transferred, may it not, without you knowing it?

A. They may have done it without my knowing it.

Q. Now, Mr. Jaccard, what was that judgement obtained on—that judgement against Snyder?

A. I think it was notes.

Q. Were they not the same notes that were subsequently transferred to Norman?

A. No, sir; I have no recollection of ever having transferred a note to any one. They were sent, I believe, to Kansas for collec-

tion, but they were never collected, and I think they were returned to us, as far as I can remember.

Q. What became of these notes after judgement was entered on them?

A. O, I can't tell.

Q. Were they not withdrawn and subsequently transferred to Norman?

A. No, sir.

Q. You don't know it?

A. No, sir.

Q. What notes did you transfer to the plaintiff in this case? What was the amount of the notes?

A. I don't know.

Q. Who was the maker of the note you transferred to the plaintiff?

(Plaintiff's counsel objects to the question.)

A. It is a good many years ago; that is the best of my memory. I know that we were the owner- of the notes and tried to collect them.

Q. I have reference to the notes that you transferred six (6) weeks or two months ago.

A. Well, I don't know the amount. I know the amount was over three thousand dollars ($3,000).

Q. Who was the maker of that note?

A. I think there were several notes, I believe, if I remember.

Q. Who were the makers of these notes?

A. Well, I think he made them in the store; they were signed by Snyder.

Q. Had Snyder any connection with that firm at that time?

A. No, sir; no more than that he bought goods from us.

199 Q. The notes were given for goods?

A. Yes, sir.

Q. What consideration did Mr. Norman pay for these notes when you transferred them?

Counsel for plaintiff objects to question.

A. I don't remember the amount; I don't know how much it is.

Q. Did he pay you any money?

A. Yes, sir.

Q. How much money?

A. I don't remember.

Q. Did he pay you one hundred dollars ($100.00)? Can you swear to that?

A. Yes, sir; he paid over a hundred dollars ($100.00).

Q. Can you swear he paid you a hundred and fifty dollars ($150.00) after the transfer of the notes?

A. I can't swear to that.

Q. You will swear he paid you as much as a hundred dollars

and, but you won't swear that he paid you as much as a hundred and fifty ($150). Did he pay a hundred and twenty-five ($125)?

A. I don't know; I don't remember the exact amount.

Q. Did he pay you as much as one hundred and ten ($110.00)?

A. Yes, sir; he paid me as much as one hundred and ten ($110.00).

Q. Did he pay you as much as a hundred and twenty ($120.00)?

A. Well, I am not positive about how much; he paid me over a hundred and ten ($110.00); I don't remember. I didn't know I was called for that case.

Q. Did he pay you any other consideration than the money you have alluded to for the notes?

A. No, sir.

Q. How much was the aggregate of the notes that were transferred to him at the time?

A. The amount of the notes?

Q. Yes, sir.

A. Well, I told you a little while ago I thought there was over three thousand dollars ($3,000); I don't remember the exact amount.

Q. Do you retain any interest in these notes still—is he to pay you some on the collection of these notes?

A. No, sir.

Q. Have you any claim on them?

A. No, sir.

Q. At the time you received the notice that Snyder had gone into bankruptcy, were you the holder of these notes?

A. Yes, sir.

Q. Did you take any steps to prove up your claim against him?

A. No, sir; we thought it was no use. I didn't make any step to prove it because we heard he had nothing left.

Q. Then, at the time you transferred these notes to the plaintiff, Norman, you knew Snyder had gone into bankruptcy, did you?

A. Yes, sir.

Q. Was Norman informed of the fact?

A. That I don't know.

Q. Any talk about it?

A. I don't know; the transfer was made at Kansas, and I don't know what conversation took place there.

Q. How came you to sell the notes for so small an amount?

A. Because I believed it was as much as I could get on it; there was nothing more to get from them, I thought; that was the reason, because from information I had I thought he had nothing left.

Q. Now, hadn't these notes been put in judgment?

200 A. I think so.

Q. When was the judgment rendered on the notes at Independence?

A. Yes, sir.

Q. It is the same judgment that was rendered in 1858?

A. It is a long time ago; the date I couldn't remember.
Q. That is the only judgment you know of against Snyder?
A. Yes, sir.

Redirect by plaintiff's counsel:

Q. At the time you sold the notes were they barred by the statute of limitation—at the time you sold the notes and the judgment and all?
A. Yes, sir; I think so. It was over ten (10) years, I think.
Q. The statute had run against them?
A. Yes, sir.
Q. Do you mean to say the notes that you transferred to Norman were the same notes upon which the judgement was rendered?
A. Yes, sir.
Q. So that the notes were the evidence of the indebtedness upon which the judgement was rendered?
A. Yes, sir.
Q. Now, you say you never transferred—you have no knowledge of this judgement ever being transferred to anybody?
A. No, sir; I have no knowledge of it.
Q. Have you any knowledge now of a lien of a certain lot in Kansas City—this judgement being released against it; this judgement was at the time a lien against all the property of Snyder?
A. Yes, sir.
Q. Now, have you any knowledge of releasing a certain lot in favor of the man Seegar on that judgement?
A. I don't remember.
Q. You say in 1864 you bought all the partnership debts of E. Jaccard and Company?
A. Yes, sir.
Q. In the purchase of these assets was this claim of Snyder's included among the assets at the time?
A. Yes, sir.
Q. That was counted as a part of the assets of E. Jaccard and Company?
A. Yes, sir; I bought all the assets of the old firm in 1864.
Q. As late, then, as 1864 that was the property of the firm?
A. Yes, sir.
Q. And since then there could be no party authorized to transfer it, only you?
A. Yes, sir.

Recross-examination by defendant's counsel:

Q. Do you remember all the items of the accounts, notes, and judgements transferred to you in that transfer?
A. Yes, sir.
Q. At the time that you purchased the interest of the other members of the firm in 1864, did you make a complete schedule of all the notes, judgements, and property of that kind?

A. I don't remember whether or not it was itemized; I think it was, and an account made of all the debts.

Q. But was there an account of all the credits?

A. Yes, sir; we counted all that was owing to the firm and all the notes—all we had that was against it—and I gave them a certain amount for all of them—a good many bad ones.

Q. Now, Mr. Jaccard, do you swear pointedly that this judgement at Independence was included in that schedule?

201 A. That I can't tell.

Q. Do you swear positively that the judgement at Independence at the time did belong to the property of the firm and had not been transferred by any member of the firm to Deegar?

A. I can't swear positively.

Q. Now, in 1864, at the time when you bought out the interests of the other partners of the firm, Seegar wasn't present, was he?

A. No, sir.

Q. Snyder wasn't there to recognize that that claim was still belonging to you and unpaid, was he?

A. Yes, sir.

Q. Was he there in 1864, at that time?

A. Snyder? No, sir; he was not.

Q. So you don't know of your own knowledge but what other members of the old firm of E. Jaccard and Company might have transferred the judgement to Seegar? You can't swear of your own knowledge but what that might have occurred?

A. No, sir; because I can't tell the action of others, and of my own knowledge I don't know it. I don't think the others would have transferred it without my knowledge.

By PLAINTIFF'S COUNSEL: Did the firm transfer that as the action of the firm?

Defendant's counsel objects.

A. I have no knowledge that the notes were transferred to any one when I bought the assets of the old firm. I bought all the assets of it in 1864.

Q. Have you ever taken any steps to collect that of Snyder since 1864?

A. No, sir.

Q. Have you ever inquired about it?

A. I think I have inquired how Snyder was doing, and always heard he wasn't doing much, and had no hope of ever getting anything from him. That's the knowledge I had.

Q. You had no knowledge that this claim was transferred to Seegar, and you have no knowledge that Seegar ever paid you anything for that?

A. No, sir.

By DEFENDANT'S COUNSEL: When you stated in answer to a question that the firm never had transferred it as a firm, you meant by that you never joined in it as a transfer?

A. No, sir; there was no account given of it.

Signature waived by consent of counsel.

202 In the United States District Court for the Western District of Missouri.

JOSE-H L. NORMAN, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant.

To Joseph Snyder, the above-named defendant:

You are hereby notified that the deposition- of witnesses to be used in evidence in the above-entitled case on the part of the plaintiff therein will be taken at the office of Lucian Eaton, register in bankruptcy for the eastern district of Missouri, in the city of St. Louis, State of Missouri, on the nineteenth day of March, 1870, between the hours of eight (8) o'clock in the forenoon and six (6) o'clock in the afternoon of that day, and that the taking of said depositions, if not completed on that day, will be continued from day to day at the same place and at the same hours until completed.

JOSEPH L. NORMAN.

I hereby certify that I served a true copy of the within notice on the said Joseph E. Snyder by delivering the same to him personally this 4th day of March, 1870, in Kaw township, Jackson county, Missouri.

W. B. COCKRELL,
Constable of Kaw Township, Jackson County, Missouri.

UNITED STATES OF AMERICA,
District of Missouri.

I, Lucian Eaton, a commissioner duly appointed by the circuit court of the United States for the district of Missouri, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil cases depending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil cases depending in the courts of the United States,' passed March 1st, 1817, and the act entitled 'An act to establish the judicial courts of the United States,'" passed Sept. 24th, 1789, and also register in bankruptcy, eastern district of Missouri, do hereby certify that the reason for taking the following depositions is and the fact is that the witness is material and necessary in the cause in the caption of the said depositions named, and that he resides in St. Louis, Missouri, more than one hundred (100) miles from the place where said deposition is to be read in evidence.

I further certify that no notification of the time and place of taking the said deposition signed by me was made out and served on the defendant, but the notice annexed was given by plaintiff to defendant to be present at the taking of the deposition and to put interrogatories, if he or they might think fit, and both parties were

present by counsel—S. A. Vose, for plaintiff, and S. N. Taylor, for def't.

I further certify that on the 19th day of March, in the year of our Lord one thousand eight hundred and seventy, I was attended by said counsel and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was for me reduced to writing in the presence of the witness and from his statement, the same being taken by consent and signature of witness waived by said counsel.

I have retained the said deposition in my presence for the purpose of mailing the same with my own hand to the clerk of the court for which the same was taken.

And I do further certify that I am not of counsel nor at-
203 torney for either of the parties in the said deposition and caption named nor in any way interested in the event of this cause named in the said caption.

In testimony whereof I have hereunto set my hand this 19th day of March, in the year of our Lord one thousand eight hundred and seventy.

LUCIAN EATON,
Commissioner and Register in Bankruptcy.

Filed March 21st, 1870.

ADAMS PEABODY, *Clerk.*

Defendants next offered in evidence a deed from the widow and heirs of David E. James to N. McAlpine, of date March 11th, 1880.

Objected to by counsel for plaintiffs because incompetent, irrelevant, and immaterial, and for the further reason that they had nothing to convey and the deed was made after suit was commenced; which objection was by the court overruled; to which ruling of the court the plaintiffs at the time except-.

Said deed is in words and figures as follows, to wit:

This indenture made this 11th day of March, 1880, between Jennie M. James, L. E. James, Virginia James, Solomon James, and Annie James of Wyandotte county, in the State of Kansas, of the first part, and N. McAlpine of the same county and State of the second part,

Witnesseth: The said parties of the first part, in consideration of the sum of one hundred and fifteen dollars ($115.00), the receipt of which is hereby acknowledged, do by these presents, remise, release, and quitclaim unto said party of the second part, his heirs and assigns, all the following-described real estate situate in the county of Wyandotte and State of Kansas, to wit:

Commencing where the central line of James street, Kansas City, Kansas, extended strikes the northerly line of David E. James allotment number fifteen (15) in the partition case number 911 on the docket of the district court of said county, wherein Thomas Ewing Jr. *et al.* were plaintiffs and William Weer *et al.* were defendants; thence south sixty-one and one-half (61½) degrees west

five hundred and eighty and eight-tenths (580.8) feet; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east five hundred and eighty and eight-tenths (580.8) feet to the center line of James street extended; thence north twenty-eight — (28½) degrees west three hundred (300) feet to the place of beginning.

To have and to hold the same, together with all and singular the tenements and hereditaments and appurtenances thereunto belonging to, or in anywise appertaining forever.

In witness whereof, the said parties of the first part have hereunto set their hands the day and year first above written.

JENNIE M. JAMES.
L. E. JAMES.
V. E. JAMES.
JENNIE M. JAMES, *Guardian.*
SALLIE M. JAMES AND
ANNIE M. JAMES.

204 STATE OF KANSAS, } *ss:*
Wyandotte County, }

Be it remembered that on the 11th day of March, A. D. 1880, before me, the undersigned, a probate judge in and for the county and State aforesaid, came Jennie M. James, L. E. James, V. E. James, Solomon James, Annie James, who are personally known to me to be the same persons who executed the within instrument of writing, and such persons duly acknowledged the execution of the same.

In testimony whereof I have hereunto set my hand and affixed the seal of probate court the day and year last above written.

R. E. CABLE,
Probate Judge.

Endorsed: State of Kansas, Wyandotte county, *ss:* This instrument was filed for record on the 11th day of March, 1880, at 5½ o'clock p. m., and duly recorded in Book 9, page 9. Fees, $1.40, paid J. S. Clark, register of deeds. J. C. Clark, deputy.

Defendants next offered in evidence a lease, of date October 21st, 1878, from Cobb and Bartlett to Mrs. Cornelia Street.

Objected to by plaintiffs because incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which ruling of the court the plaintiffs at the time duly excepted.

Said lease is in words and figures as follows, to wit:

Lease.

It is hereby agreed, between A. D. Downs and Sophia A. Cobb administrator of the estate of S. A. Cobb, deceased and A. B. Bartlett, of the first part and Cornelia Street of the second part as follows:

The said parties of the first part in consideration of the rents and

covenants herein specified do hereby let and lease to the second party all that tract of land in the city of Kansas, Kansas, in Wyandotte county, bounded on the east by James street and its extension; on the west by Armstrong street as it would be if opened and extended on its present line as laid out; on the north by the land of T. H. Swope, and on the south by an alley of said city eighteen (18) feet wide, being about four (4) acres of land more or less, and the same tract conveyed by Byron Judd to Cobb and Bartlett.

For the term of one year from date from and after the 21st day of October A. D. 1878, on the terms and conditions hereinafter mentioned the payment of said second party of ten dollars ($10.00) per annum in advance.

Provided, that in case any rent shall be due and unpaid, or if default be made in any of the covenants herein contained, then it shall be lawful for the said first party or their certain attorney, to re-enter into and repossess the said premises, and the said party of the second part, and each and every other occupant to remove and put out.

And the said Cornelia Streets does hereby hire the said premises for the term of one year from October 21st, 1878 as above mentioned, and does covenant and promise to pay to the said first party as rent for said premises, the sum of ten dollars ($10.00) in manner and time as follows, to wit, on or before the first (1st) day of November, A. D. 1878.

And it is mutually agreed between the parties hereto, that his lease may be cancelled and terminated by either party giving the other thirty (30) days' notice in writing of his or her intention so to do; and upon cancellation or termination of this lease said second party shall have the right to remove any and all improvements by her made or erected upon said land or which she had at the date of the lease thereon, or the said first party may buy the same
205 from her at their fair actual value, at the time of the termination of this lease as may be agreed.

And the party of the second part also agrees that she will at her own expense, during the continuance of this lease, keep the said premises and every part thereof, in good repair and will not release or assign his lease without the written consent of the first party and at the expiration of the term yield and deliver up same in like condition as when taken, reasonable use and wear and tear thereof and damage by elements excepted.

And the said parties of the first part do covenant that the second party, on paying the aforesaid installments, and performing all the covenants aforesaid, shall and may peaceably — quietly have, hold and enjoy the said demised premises for the term aforesaid.

Witness our hands and the seals, this 21st day of October, A. D. 1878.

A. B. BARTLETT,
By E. L. BARTLETT,
His Agent and Attorney-in-Fact. [SEAL.]
SOPHIA A. COBB, [SEAL.]
A. D. DOWNS,
Administrator- of the Estate of S. A. Cobb, Deceased. [SEAL.]

By mutual agreement the within lease is continued in force with all its covenants from this date for one year at the annual rent of twelve ($12) dollars, the receipt of which is hereby acknowledged.

A. B. BARTLETT,
By E. L. BARTLETT,
His Agent and Attorney-in-Fact.

Defendants next offered in evidence the original papers and files in the cases of Henry R. Seegar *vs.* Joseph E. Snyder, No. 1734, and C. F. Welland *vs.* Joseph E. Snyder, No. 1735, a certified copy of which are included in the certified copy of the records in said cases, seen at pages 102 to 172 of this case, with the exception of the affidavits, briefs, &c., being the remainder of papers *and* filed in said cases, and which are in words and figures as follows, to wit:

206 STATE OF KANSAS, } ss:
County of Wyandotte, }

District Court of Wyandotte County, Kansas.

SEEGAR } 1734.
vs.
SNYDER. }

WELLAND } 1735.
vs.
SNYDER. }

James M. Mason, being duly sworn, deposes and says that — *having* read the affidavit of Lafayette Traber, filed in said court December 22nd, 1882, and says that it is untrue.

That the only consideration paid by said Traber for all the interests he acquired in said attached lands was his professional services in badly managing the two attachment suits above mentioned and the sum of fifty dollars ($50.00) he paid to Henry R. Seegar, one of the plaintiffs, for his interest in said land accruing from said Seegar attachment suit, which interest of said Seegar was a one-half (½) interest in what said Traber could get out of the attachment suit.

That the claims upon which said attachments suits were founded were without equity and were old and abandoned claims, and said Traber sought out and persuaded said Welland and Seegar to allow him to get the said attachment suits, and agreed to do, so far as conditional fee of one-half (½) of the outcome therefrom. Most of these facts appear in the former record of this case of Tourtelotte *et al. vs.* McAlpine *et al.*

That if said Tourtelotte and Allcutt paid anything for said claim of Traber they paid more than said claim was worth, and said Traber and Norman are responsible for the consideration money and interest and are able to answer the same, and said Tourtelotte and Allcutt have their remedy against said Traber and Norman if the title to said Traber claim fails.

That the forty (40) feet by two hundred and eighty-nine (289)

which said Traber mentioned as conveyed to Treffner and wife and by them conveyed to Peter Boyle was another fee paid for legal services to said lawyer, Treffner, of Kansas City, provided that the said Treffner would stand aside with certain claims which he, Treffner, represented of same character to those represented by Traber and allow Traber's claim to take precedence.

That the two hundred and twenty (220) by two hundred and eighty-nine (289) went to the lawyers in these cases; eighty (80) feet by two hundred and eighty-nine (289) went to Seegar and Welland, each getting forty (40) feet. Seegar quitclaimed his forty (40) feet to Traber for fifty dollars ($50.00).

If Peter Boyle paid anything for Treffner's claim he paid more than it was worth, and the remedy of Boyle and his heirs is against said Treffner in consideration; and

That at the time said Tourtelott and Allcutt and said Boyle purchased said claims the title of grantors of McAlpine and Mason was matters of record and said purchasers had full notice of the equity and claims of said title of Cobb and Bartlett, who were in possession of and occupied said land attached, being the whole of the time from March, 1874, to the time when said McAlpine purchased in 1879.

That said Cobb and Bartlett in 1876, 1877, 1878, and 1879, when these purchases were made, had several houses, fences, and visible improvements on the attached land, held by tenants of said Cobb and Bartlett, who claimed under a recorded chain of title from the bankrupt court dated from 1871 down to that time, a regular chain of title deducible from the records of the district court of the United States for the district of Missouri, sitting in bankruptcy.

That said McAlpine and Mason are in full possession of said lands since purchasing in 1879.

Affiant further says that it is untrue that said A. B. Bartlett and S. A. Cobb or either of them ever abandoned the title to said attached lands to any one, and the records of the former trial
207 do not show such matter, and said Cobb never became convinced that he and Bartlett did not get a good title under the bankruptcy proceedings and never abandoned their claim to said lands.

Concerning the tax matter spoken of by said Traber, affiant say-that said Traber never redeemed said lands from tax sale; that said Bartlett had no right to any redemption money paid thereon; that said McAlpine did not pay as a consideration for said property said sum of money because he recognized any obligation on his part to pay the sum on account of any error or supposed error committed with his entries in his records of the county treasurer's office, but as a new and absolute consideration.

And said McAlpine was not informed in any way at the time that said Cobb and Bartlett had no claim of title to said land, nor does the record of the said suit of Tourtelotte *et al. vs.* McAlpine *et al.* show such a state of facts by any reasonable construction.

JAMES M. MASON.

Subscribed and sworn to before me this 13th day of December, 1882.

My commission expires April 5th, 1883.

JOHN S. COX,
Notary Public. [SEAL.]

Endorsed: Seegar *vs.* Snyder; Weeland *vs.* Snyder. 1734, 1735. Filed Dec. 27th, 1882. G. W. Betts, clerk.

STATE OF KANSAS, }
County of Wyandotte, } *ss:*

Henry Henderson, of lawful age, resident of Wyandotte county; Came here about 1878; built a house — what is sometimes called the island—a higher piece of ground located a little westerly of where Fowler's cooper shop now stands—northerly from Kansas City, Kansas; know the piece of ground fenced in by McAlpine and Mason in 1879; recollects no stump in the low benches of this ground; cut up a stump which stood west of McAlpine and Mason's fence same year the fence was built. There was an elm tree broken by the wind south of my house and westerly of Mason's fence. There were no stumps I can recollect of between Wood and Armstrong street- on the McAlpine and Mason claim.

H. HENDERSON.

Sworn to and subscribed before me this 30th day of December, 1882.

My commission expires April 5th, 1883.

JOHN S. COX,
Notary Public. [SEAL.]

STATE OF KANSAS, }
County of Wyandotte, } *ss:*

William Jones, age twenty-three (23), being by me duly sworn, deposes and says that he has known the certain tract of land claimed by Cobb and Bartlett, lying between James and Armstrong streets extended, a part of which was fenced by McAlpine and Mason in 1879. My brothers and myself built the house known as the Altop house, situated on the easterly side of Wood street extended, about 1876.

That I have known the land some years before that, and know of a person living on it named Enos Long, who had his family on it and lived near the northeast corner of the four (4) acre tract claimed by Cobb and Bartlett. I don't recollect as there was any stumps in the low ground between Fowler's cooper shop *or* the line of Armstrong and Wood street-, on the low benches of the ground; don't recollect of seeing any stumps on the little raised ridge dividing the low ground lying nearly to the southerly side of the land where one of the Taylor boys moved their house.

WILLIAM JONES.

Subscribed and sworn to before me this 1st day of January, 1883.

JOHN S. COX,
208 *Notary Public.* [SEAL.]

My commission expires April 5th, 1883.

STATE OF KANSAS, } ss:
County of Wyandotte, }

James H. Jones, of lawful age, being duly sworn, deposes and says he is well acquainted with the certain tract of land lying between James and Armstrong street- extended, formerly claimed by Cobb and Bartlett, in the bottom lands, northerly part of Kansas City, Kansas; built the house that Altop afterwards lived in; built it about 1876. I also built a house on the same ground before that; built a house on west side of Wood street north of the 18-feet alley bounding the northerly bounds of this land platted into residence lots on this four (4) acre tract; built this last house, I think, in 1874; know Enos Long lived on the land about the time he built this first house. I think our house was put up first; lived in this house two or three years; this — the first built house, and lived there until we sold it and built the Altop house in 1876.

Enos Long's house was on the northeast corner of the tract, a little south of where the lard-house of Fowler and Brothers is located, in the westerly side of James street. I do not recollect of any stump or stumps in the lower ground of this tract between Wood and Armstrong streets or on the little raised ridge half way between this is the best of my recollection.

J. W. JONES.

Subscribed and sworn to before me this 1st day of January, 1883.

My commission expires April 5th, 1883.

JOHN S. COX,
Notary Public. [SEAL.]

STATE OF KANSAS, } ss:
County of Wyandotte, }

James M. Mason, of lawful a*h*e, being duly sworn, *of lawful age,* deposes and says—

That he is one of the parties and is an attorney in the suit of Tourtelotte *et al. vs.* Wilkins *et al.*, and that William H. Ryus, who professes to have attached the lands in litigation in said suit of Seegar *vs.* Snyder and Welland *vs.* Snyder, has for a long time heretofore held a bitter and malicious grudge against said affiant, as he believes and has reason to believe; that formerly said Ryus and said Mason were in partnership together in the abstract business in Wyandotte, in 1878 and 1879, and said affiant had difficulty with said Ryus in adjusting said business with said Ryus, and a long and tedious litigation followed between them, calling forth all the bitterness of feeling usually in such cases; that said Wm. H. Ryus

and his adherents are unscrupulous and would do all the injury to said affiant that they could and are bitterly prejudiced against said affiant because he dissolved the partnership with them and on account of disagreement in business arrangements about the year 1879 or 1880; that upon the dissolution of said partnership and upon said affiant's going out of the office in which said abstract business was carried on said Ryus declared that said affiant could not get a living in said town out of this affiant's office and alone and by himself; and said affiant believes and has every reason to believe that in this matter of the motion to amend attachment returns herein said Ryus has sworn stronger for the Tourtelott and plaintiff parties than the facts of the case will warrant on account of said existing prejudice and bitterness.

Affiant has heard said Ryus say, prior to the rupture in business between them and after the death of S. A. Cobb, that said Traber and Norman or Tourtelott claim was worthless, and at one time proposed to purchase the claim of Cobb and Bartlett and go into the courts and defeat said bogus claim; affiant has seen and known of the inner workings and intrigues of the said William H. Ryus and the ring of men who adhere to him in Wyandotte county and know- that they are unscrupulous *and* in their proceed-
209 ings, and this is one of the reasons why he dissolved said business connection, because he didn't want to stand alone.

JAMES M. MASON.

Sworn to and subscribed before me this 3rd day of January, 1883. My commission expires April 5th, 1883.

JOHN S. COX,
Notary Public. [SEAL.]

STATE OF KANSAS, } *ss:*
County of Wyandotte, }

Personally appeared William Taylor and —— ——, who are of lawful age, being duly sworn, deposes and says:

Are acquainted with the four (4) acre tract of land claimed by Cobb and Bartlett, located between James and Armstrong street-, Kansas City, Kansas. Knew the land in 1875. Knew Enos Long lived on this ground in that year. Had a house and some fencing. The house Long lived in was a little southerly of the presen- land-house of Fowler Brothers, on westerly side of James street. I recollect a tree, broken by the wind, on what is called the island. There were some stumps from the river clear out to Armstrong street. I used to cut wood off of them. Don't recollect as to any beyond Armstrong or east of Armstrong street. I heard Enos Long say he rented his ground of Cobb and Bartlett. This was in 1875.

his
WILLIAM x TAYLOR.
mark.

Attest: J. S. COX. E. T. BAKER.

Subscribed and sworn to before me this 30th day of December, 1882.

And I certify that the foregoing affidavit was fully read to affiant before he executed the same.

My commission expires April 5th, 1883.

JNO. S. COX,
Notary Public. [SEAL.]

STATE OF KANSAS, } ss:
County of Wyandotte, }

Catherine Taylor, mother of William and Samuel Taylor, and Samuel Taylor, being by me duly sworn, depose and say—

That they are familiar with the certain tract of land claimed by Cobb and Bartlett, lying between James and Armstrong streets, four (4) acres; that they lived in the vicinity of said land since 1878; that there were houses on the land in that year. We recollect a tree, broken off by the wind, in what is called the island. There were stumps from the Kansas river clear out to Armstrong street. The sons came home, cut wood off them. We do not recollect as any beyond Armstrong street—that is, easterly of Armstrong street.

her
CATHERINE x TAYLOR.
mark.
his
SAMUEL x S. TAYLOR.
mark.

Attest: ETTIE TAYLOR.
JOHN S. COX.

Subscribed and sworn to before me this 2nd day of January, 1883.

And I certify that the foregoing affidavits were read to affiants before they executed the same.

My commission expires April 5*rd*, 1883.

JOHN S. COX,
Notary Public. [SEAL.]

STATE OF KANSAS, } ss:
County of Wyandotte, }

Wm. W. Jones, of lawful age, being duly sworn, deposes and says he has resided in the vicinity of Kansas City, Kansas, ten (10) years, at the least. Lived in the bottom ground in northerly part of Kansas City, Kansas, since fall of 1875. Had a house near First street and westerly side of Wood street, which I rented from Thomas McConnelly. Lived there about five (5) months; then built another house near there. Afterwards, in 1877, built what is called the Altop house, being a house that a Mr. Altop afterwards lived in. Recollect Enos Long living on westerly side of James street, southerly of where Fowler's lard-house stands. Saw no stumps, during my knowledge, there located in the low lands, in the low benches of the ground where the river runs through; where it is high, would not and *did* not know now that there were any stumps on the ground. Afterwards fenced in by McAlpine and

Mason, in 1879. Know the ground around which a cotton-wood pole fence was built in 1879. Lived in the Altop house one winter after Mason took possession. Can recollect no stumps on the part of said ground westerly of Wood street. Recollect on what use to be called the island, a higher piece of ground westerly of Armstrong street extended, there were some stumps, and recollect one broken by the wind nearer the river. I saw notices stuck up on this ground, or it might be on the ground a little west of there, warning people not to take sand; that is all the kind of notices I saw posted up near that ground.

W. W. JONES.

Subscribed and sworn to before me this 4*rd* day of January, 1883. My commission expires April 5th, 1883.

JOHN S. COX,
Notary Public. [SEAL.]

In the District Court of the Tenth Judicial District of Wyandotte County, Kansas.

GEORGE W. TOURTELOTTE and GEO. P. ALLCUTT, Plaintiffs,
against
CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERING, NICHOLAS McALPINE, and JAMES M. MASON, Defendants.

John S. Cox, of lawful age, being duly sworn, deposes and says that he has been a resident of Wyandotte city for twelve (12) years and has been and is well acquainted with the certain tract of land marked Joseph E. Snyder on the plat number nine (9) of Kansas City, Kansas, at the office of the register of deeds of Wyandotte county, Kansas, containing about four (4) acres of land, more or less, and lying between the extensions of James street and Armstrong streets, in Kansas City, Kansas, southerly of the tract therein mentioned as the lands of Thomas H. Swope, described as follows, to wit:

Commencing at the intersection of the center line of James street extended with the north line of allotment number 15, to D. E. James, in the certain partition suit number 911 on the docket of the district court of said county, thence south sixty-one degrees (61) and fifty (50) minutes west five hundred and eighty and eight-tenths (580.8) feet; thence south twenty-eight (28) degrees and ten (10) minutes east three hundred (300) feet; thence north sixty-one (61) degrees and fifty (50) minutes east five hundred and eighty and eight-tenths (580.8) feet; thence north twenty-eight (28) degrees and ten (10) minutes west three hundred (300) feet to the beginning, containing four (4) acres, more or less, being also otherwise described as in the bankrupt deed to Byron Judd, date- October 20th, 1871, recorded in Book "Q," pages 189, 190, and 191, at said register of deeds' office, to which deed reference is had; that in the spring of 1874 he had the above-described four (4) acres of land for sale as agent of A. B. Bartlett, and was then frequently over said land and

familiar with it and the objects thereon; at that time Enos Long lived on the northeast corner of said land, near James street, with a small enclosure on the west side of the house, and there were no other fence- on the four (4) acres; no stumps or trees on said four (4) acres tract except as follows, viz., one stump standing near the southeast corner of Long's house, one stump about the southeast corner of said land, about on the west line of James street, and one stump near about the east line of Wood street extended and about sixteen (16) or twenty (20) feet north of the south line of
211 said land as shown to me by A. B. Bartlett; there were some stumps north of said land near to the approach of the iron bridge; also some west of it, where there was at that time a stump of tree standing with part of the top broken off; there were at that time no monuments or stakes showing the corners or anything else marking the boundaries of said land.

Mr. Bartlett located the land to me by commencing at a point on the west side of James street on a line with T. J. Baier's north fence, and then running a certain number of feet, not now remembered, southerly along James street; then west at right angles with James street westerly so many feet. Do not now remember the number of feet, but as I stepped off the distance then I found it to reach a point between Armstrong street and the alley between Wood and Armstrong streets; then northerly and on easterly of same distance, making a four (4) acre right angle.

JOHN S. COX.

Subscribed and sworn to before me this 3rd day of January, 1883.

D. S. YOUNG,
Notary Public. [SEAL.]

STATE OF KANSAS, } ss:
County of Wyandotte, }

And in further continuation of the above statement concerning the above-mentioned tract of land of four (4) acres, said above-mentioned John S. Cox, being duly sworn again, deposes and says that at the time above mentioned, in 1874, there was no cross fence or fence of any kind on said above-mentioned land on said four acres except the above-mentioned enclosure of Enos Long, westerly of his, Long's, house, and there was no fence or portion of a fence on said land dividing in any way the land attached in the Seegar and Welland suits, Nos. 1734 and 1735 on the docket of said court, from any other portion of said four (4) acre tract, and no landmarks of any kind purporting in any way to make any such division; if there had been affiant would have seen it.

JNO. S. COX.

Subscribed and sworn to before me this 3rd day of Jan'y, 1883,

D. S. YOUNG,
Notary Public. [SEAL.]

STATE OF KANSAS, } ss:
County of Wyandotte, }

James M. Mason, being duly sworn, deposes and says, in addition to the statements heretofore concerning the certain tract of four (4) acres of land marked Joseph E. Snyder on the plat of Kansas City, Kansas, number nine (9), on file at the office of the register of deeds of said county, that, as he has heretofore stated in former affidavits in the matter of the motion to amend the attachment returns in cases of Seegar *vs.* Snyder and Welland *vs.* Snyder, No. 1734 and 1735, that in the year 1874, from the early spring of that year, thenceforward to the present time, he has been a close observer of the fences and improvements placed on the bottom lands, northerly of and forming part of Kansas City, Kansas.

That in 1874 and in May, 1874, there was positively no fence marking or designating in any way any division between the lands claimed to be attached in said suits, 1734 and 1735, and the rest of the four acres claimed by Cobb and Bartlett; that it was held there and was held from said early spring of 1874 up to 1879 as one undivided and whole tract of four acres of land by Cobb and Bartlett, and there was no fence or part of a fence in 1874 or since that time prior to 1879 to mark any division of the said tract; that Enos Long had an enclosure on the northeast corner of said land in 1874, but no fence built by him or then built had any significance in indicating such division of tract as above suggested.

That affiant was the first person who built a fence from the northerly to the southerly line of said land, or for any part of said distance, which was three hundred (300) feet, for the purpose of
212 enclosing and division of the tract, and this said fence, built by affiant, was for the purpose of indicating the eastwardly line of the land purchased by McAlpine from A. B. Bartlett and the widow of S. A. Cobb, who was then dead, and said fence was built by affiant in 1879, and there was no such fence built prior to 1879; that about the year 1876 or 1877 the lands were occupied by various tenants of Cobb and Bartlett, among whom were some of the Jones boys; that in 1878, and probably some time before that, Mrs. Street leased the whole of said four (4) acres of Cobb and Bartlett, and she built a house near the center of the four (4) acres and inclosed the small piece of land about the size of a town lot. A part of her inclosure and improvements were on the part claimed to be attached herein, and the other part on the rest of the Cobb and Bartlett tract, and no fence was built along or near the easterly line of the said McAlpine purchase or the easterly line of said attached claim for the purpose of designating any division there prior to 1879, and then only for the purpose of defining the McAlpine purchase.

And although divers tenants of Cobb and Bartlett might, from time to time, have had small inclosures of small portions of the four acres, such inclosures had no significance except to bound the house yard of such occupants.

Mr. Jones and Mr. Altop, who subsequently came onto the land, were sub-leasees of Mrs. Street under Cobb and Bartlett.

Mr. George Altop held a lease from Cobb and Bartlett, in writing, in 1877, for the whole of said four acres, and Mrs. Street held a lease in writing for the -hole four (4) acres under Cobb and Bartlett for 1878 and 1879, but none of these occupants of Cobb and Bartlett had any division fence which indicated any such divisions as the one above suggested.

JAMES M. MASON.

Subscribed and sworn to before me this 5th day of January, 1883. My commission expires April 5th, 1883.

JOHN S. COX,
Notary Public. [SEAL.]

STATE OF KANSAS, } ss:
County of Wyandotte, }

Mrs. Cornelia Street, of lawful age, being duly sworn, deposes and says that she is the same Cornelia Street who formerly leased the four (4) acres of land marked Joseph E. Snyder, spoken of by James M. Mason in his affidavit above attached; that she leased said land as a whole tract of A. B. Bartlett and the representations of S. A. Cobb in 1878; that when she leased the same she bought a house there near the center of the four (4) acre tract, placed there by Mr. Altop, who had lived there some time—as much as two (2) years previous thereto.

That at the time she went onto the land there was no fence dividing in any way the lands afterwards bought by N. McAlpine from the rest of said four (4) acres.

Affiant has heard the statements of James M. Mason above, and says that the same is true within her recollection; that the enclosure around her said house was partly on the McAlpine purchase and partly on the part kept by Cobb and Bartlett.

CORNELIA STREET.

Subscribed and sworn to before me this 5th day of January, 1883, and I certify that the above affidavits were both read to affiants previous to swearing to same.

JOHN S. COX,
Notary Public. [SEAL.]

My commission ex. April 5th, 1883.

Endorsed: No. 1734 and 1735. Henry R. Seegar *vs.* Jos. E. Snyder and C. F. Welland *vs.* Jos. E. Snyder. In the matter of the motion to amend the attachment returns. Filed January 6th, 1883. G. W. Betts, clerk. J. M. Mason, attorney.

Mr. Jones and Mr. Altop, who subsequently came onto the land, were sub-leasees of Mrs. Street under Cobb and Bartlett.

Mr. George Altop held a lease from Cobb and Bartlett, in writing, in 1877, for the whole of said four acres, and Mrs. Street held a lease in writing for the -hole four (4) acres under Cobb and Bartlett for 1878 and 1879, but none of these occupants of Cobb and Bartlett had any division fence which indicated any such divisions as the one above suggested.

JAMES M. MASON.

Subscribed and sworn to before me this 5th day of January, 1883. My commission expires April 5th, 1883.

JOHN S. COX,
Notary Public. [SEAL.]

STATE OF KANSAS, } ss:
County of Wyandotte, }

Mrs. Cornelia Street, of lawful age, being duly sworn, deposes and says that she is the same Cornelia Street who formerly leased the four (4) acres of land marked Joseph E. Snyder, spoken of by James M. Mason in his affidavit above attached; that she leased said land as a whole tract of A. B. Bartlett and the representations of S. A. Cobb in 1878; that when she leased the same she bought a house there near the center of the four (4) acre tract, placed there by Mr. Altop, who had lived there some time—as much as two (2) years previous thereto.

That at the time she went onto the land there was no fence dividing in any way the lands afterwards bought by N. McAlpine from the rest of said four (4) acres.

Affiant has heard the statements of James M. Mason above, and says that the same is true within her recollection; that the enclosure around her said house was partly on the McAlpine purchase and partly on the part kept by Cobb and Bartlett.

CORNELIA STREET.

Subscribed and sworn to before me this 5th day of January, 1883, and I certify that the above affidavits were both read to affiants previous to swearing to same.

JOHN S. COX,
Notary Public. [SEAL.]

My commission ex. April 5th, 1883.

Endorsed: No. 1734 and 1735. Henry R. Seegar *vs.* Jos. E. Snyder and C. F. Welland *vs.* Jos. E. Snyder. In the matter of the motion to amend the attachment returns. Filed January 6th, 1883. G. W. Betts, clerk. J. M. Mason, attorney.

213 In the District Court of Wyandotte County, State of Kansas.

HENRY R. SEEGAR, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant.

C. F. WELLAND, Plaintiff,
vs.
JOS. E. SNYDER, Defendant.

The parties asking leave for the sheriff to amend returns in this case will use proof in support of the motion for leave to amend, in addition to affidavits and depositions on file, all the papers — herein-entitled cause; including execution and returns thereon; also the deeds mentioned in affidavit of L. Traber; also the special findings of facts mentioned in affidavit of said Traber in ejectment suit of George W. Tourtelotte and George P. Allcutt *vs.* James M. Mason and N. McAlpine *et al.*

PRATT, BRUMBACK AND FERREY,
Attorneys for Moving Parties.

Filed January 15th, 1883.

L. C. TRICKEY, *Clerk.*

(Here follows map marked p. 214.)

215 Here in original case made is a "Plan of Kansas City, Kas., Wyandotte Co., Ks.

216 STATE OF KANSAS, } *ss:*
County of Wyandotte, }

James M. Mason, being further duly sworn in regard to the pending motions in above-entitled causes of Seegar *vs.* Snyder, 1734, and Welland *vs.* Snyder, 1735, deposes and saith that the interpleaders and opponents to the motion to amend attachment returns therein derive their title to the lands claimed to be attached in said suits through a regular chain of title deducible of record from the records of the district court of the United States and the tax records of the county of Wyandotte and State of Kansas and from the office of the register of deeds of said county and under and by virtue of the following deeds of conveyance, viz:

1st. A deed under the order of the district court of the United States of the district of Missouri, sitting in bankruptcy, by Henry N. Ess, bankrupt's assignee, dated October 20th, 1871, recorded October 27th, A. D. 1871, Book Q, pages 189 to 191, to Byron Judd, purchased at the bankrupt's sale.

2nd. A deed from Byron Judd and wife to S. A. Cobb and A. B. Bartlett, dated July 21st, 1872, recorded September 30th, 1872, Book S, page 25.

3. A deed from A. B. Bartlett and Sarah E., his wife, by E. B. Bartlett, attorney-in-fact, and Sophia A. Cobb to N. McAlpine, dated

June 14th, 1879, recorded 2nd day of August, 1879, Book 6, page 270–271; consideration mentioned, 1 dollar.

4. Power of attorney from said A. B. Bartlett and wife to said E. L. Bartlett, authorizing said above-mentioned conveyance, duly recorded.

5th. Conveyance from the widow and heirs of D. E. James, deceased, to said N. McAlpine—consideration, $115.00—dated March 11th, 1860, recorded March 11th, 1880, Book 9, page 9.

6. Tax deed, regular on its face, of said attached lands from county clerk of said county to C. I. Richards, dated October 18th, 1875, recorded in Book 4, page 352 to 354.

7. Power of attorney from C. I. Richards and wife to J. C. Douglass to make conveyance to said lands, dated 1st day of October, 1872, recorded January 1st, 1880, Book 7, — 373.

8. Deed from C. I. Richards and wife, per J. C. Douglass, attorney-in-fact, to Nicholas McAlpine, dated July 29th, 1879, recorded December 15th, 1880, Book 11, page 130 to 131; consideration, three hundred dollars ($300).

9. Conveyance from Alfred H. Cobb and wife, one of the heirs of S. A. Cobb, deceased, to Nicholas McAlpine—consideration mentioned, one dollar; real consideration, seventy-five dollars ($75.00)—dated 21st June, 1882, recorded 24th June, 1882, Book 19, page 95–96.

10. Conveyance by Sophia A. Cobb as guardian *ad litem* of Stephen A. Cobb, Junior, minor heir of S. A. Cobb, deceased, under order of the probate court of said county, dated June 21st, 1882, recorded June 24th, 1882, Book 19, page 293 and 294; consideration, fifty dollars ($50.00) and costs of guardian, amounting to in all one hundred and forty dollars ($140.00).

That the title accruing to said McAlpine under the two last deeds, being of one-sixth ($\frac{1}{6}$) interest in said lands, has never been passed upon in any way by the Supreme Court, the same having never in any way been in litigation; that all of the above deeds were
217 duly executed, acknowledged, and delivered, and were duly recorded, as above shown, and make a connected chain of title from said Snyder, D. E. James, Cobb, and Bartlett, and the county clerk's office to said McAlpine without break or any substantial defect whatever.

That the plat of Kansas City, Kansas, hereto attached, is a correct tracing linen copy of the plat number nine (9) of the office of register of deeds *office* in said county, heretofore referred to in divers affidavits; that on said plat all lots regular are one hundred and twenty (120) feet long and twenty-four (24) feet wide. James street is eighty (80) feet wide. Wood street is sixty (60) feet wide. The alley southerly of the track marked to Jos. E. Snyder is eighteen (18) feet wide. The other alleys in said plat are sixteen (16) feet wide. The northerly line of the tract marked Joseph E. Snyder runs south sixty-one and one-half ($61\frac{1}{2}$) degrees west five hundred and eighty and two-twelfths ($580\frac{2}{12}$) feet from the point where the center line of James street intersects the northerly line of D. E. James' allotment, and is correctly described in former affidavits herein filed.

The attached claim, as also the McAlpine purchase, is bounded on the easterly by a line fifty-four (54) feet north sixty-one and one-half (61½) degrees east of the easterly line of Wood street extended.

JAMES M. MASON.

Subscribed and sworn to before me this 6th day of January, 1883. My commission expires April 5th, 1883.

JOHN S. COBB, [SEAL.]
Notary Public.

In the District Court of the Tenth Judicial District, Wyandotte County, Kansas.

GEORGE W. TOURTELOTTE and GEORGE P. ALLCUTT, Plaintiffs,
against
CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERING, NICHOLAS McALPINE, and JAMES M. MASON, Defendants.

James M. Mason and Nicholas McAlpine, of lawful age, being duly sworn, depose and saith that they have been residents of —— for —— years and *has* been and *is* well acquainted with the certain tract of land marked Jos. E. Snyder on the plat number nine (9) of Kansas City, Kansas, at the office of the register of deeds of Wyandotte county, Kansas, containing about four (4) acres of land, more or less, and lying between the extension of James street and Armstrong street, in Kansas City, Kansas, southerly of the lands therein mentioned as Thos. H. Swope, described as follows, to wit:

Commencing at the intersection of the center line of James street extended with the north line of allotment number fifteen (15) to D. E. James in the certain partition suit number nine hundred eleven (911) on the docket of the district court of said county—

Thence south sixty-one (61) degrees and fifty (50) minutes west five hundred and eighty and eight-tenths (580.8) feet; thence south twenty-eight (28) degrees and ten (10) minutes east three hundred (300) feet; thence north sixty-one (61) degrees fifty (50) minutes east five hundred and eighty and eight-tenths (580.8) feet; thence north twenty-eight (28) degrees and ten (10) minutes west three hundred (300) feet to the beginning, containing four (4) acres, more or less, and being also otherwise described as in the bankrupt deed to Byron Judd dated October 20th, 1871, recorded in Book Q, pages 189, 190, and 191, at said register of deeds' office; to which deed reference is had.

That the above-mentioned Nicholas McAlpine and James
218 M. Mason have an interest in the above-entitled cause, purchased by them prior to the filing of motion to amend the attachment returns in the case of Seegar and Welland, herein mentioned, and since the commencement of the said suit — Tourtelotte *vs.* Wilkins *et al.*, above entitled, which said interest they have purchased for a valuable consideration, viz., for —— dollars, a one-sixth (⅙) interest undivided in all that land which is hereinafter mentioned, one tract which is described in the pending suit, viz:

A tract described in the petition therein as one hundred and eighty (180) feet by two hundred and eighty-nine (289) feet; the other immediately northerly of this last-mentioned tract of land one hundred and twenty (120) by two hundred and eighty-nine (289) feet, both tracts of which are subject to the same questions as those unsolved in the pending litigation in said suit, but which have not been litigated upon and are no way under the opinion of the supreme court in the Tourtelotte suit, but the title to which will be affected, to the injury of the defendants, by allowing of the motion to amend in the cases of Henry R. Seegar and C. F. Welland, Nos. 1734 and 1735 on the docket of the district court of Wyandotte county, Kansas, because the record so made could be used as evidence against the said McAlpine and said Mason in case suits should be commenced thereon by the persons who claim interests growing out of the attachment suits, the returns of which it is sought to amend, and said McAlpine and Mason would be greatly prejudiced by such amendment; that the facts will not justify any such amendments, and the parties who claim interests in all said one-sixth ($\frac{1}{6}$) interest in said lands, among whom are the plaintiffs in said suit, Tourtelotte *et al. vs.* Wilkins *et al.*, have no real equities or valid claims or right in said property, *which* the said McAlpine and said Mason have all the equities and title in and to said one-sixth ($\frac{1}{6}$) interest above mentioned.

That, furthermore, affiants say that said Tourtelotte and Alcutt have no real, *bona fide* equities or rights in the property in litigation in the suit of Tourtelotte *et al. vs.* Wilkins *et al.*, 2547, but the said McAlpine and Mason have, in fact and in right, all the right, title, and interest in the same.

JAMES M. MASON.
NICHOLAS McALPINE.

Subscribed and sworn to before me this 7th day of December, 1882.

My commission expires April 5th, 1883.

JNO. S. COX, [SEAL.]
Notary Public.

Endorsed: Nos. 1734 and 1735. H. R. Seegar *vs.* Joseph E. Snyder. C. F. Welland *vs.* Joseph E. Snyder. Affidavits and plat. Filed January 6th, 1883. G. W. Betts, clerk. J. M. Mason, attorney.

219 STATE OF KANSAS, } ss:
Wyandotte County, }

Harvey Brown, upon oath, says that he moved into what is Kansas City, Kansas, in said county, in the fall of 1874, and has resided there ever since and on the land lying between the Fowler packing-house and the Kansas river, up towards the city of Wyandotte from said packing-house property; that the property —, and is well acquainted with the small tract of land through which Wood street extended

will run, and bounded on two sides by the Fowler packing-house property, and a part of which is in controversy and suit between George W. Tourtelotte and Geo. P. Allcutt, on the one side, and J. M. Mason and N. McAlpine, on the other, and being the same land of which said Mason and McAlpine have for some time had possession *of* on the larger part of the tract, said Tourtelotte and Allcutt having possession of a small part of the tract.

Affiant remembers distinctly that in the fall of 1874 and for some time thereafter there were stumps on said land and adjoining lands, and that people in that neighborhood often worked wood off such stumps.

Affiant further states that soma days ago said J. M. *Am*son wanted affiant to make an affidavit that there were no stumps on said land in 1874, but he refused to do so, because it was not true that there was no stumps then on said land.

his
HARVEY x BROWN.
mark.

Subscribed and sworn to before me and in my presence this 29th day of December, 1882.

W. J. BUCHAN, [SEAL.]
Notary Public.

STATE OF KANSAS, }
Wyandotte County, } *ss:*

Elias Beck makes oath and says that he has heard read the foregoing affidavit of Harvey Brown; that he has been well acquainted with the lands mentioned in said affidavit ever since 1866, and has lived ever since, except about three (3) years, abd buiit the first shanty ever built in that part of Kansas City, Kansas. When affiant says that in 1866 most of the trees had been cut down, but some snags were still standing, affiant knows that there were some stumps on said land claimed by Tourtelotte and Alcutt, on the one side, and Mason and McAlpine, on the other, in the year 1874 and for some time after.

Affiant says that he was living near said land when said Mason was getting possession, about three (3) years ago, and knows that there were two (2) or three (3) stumps on said land then, and affiant and his wife spoke of the fact at the time in talking with each other. Before that people had often cut wood off the stumps, and they had in that way been cut down pretty close to the ground, but occasionally darkies then worked some little wood off such stumps.

There was, as affiant distinctly remembers, a large stump in the lower part of the land in 1874 and for some time after. The stumps showed that there had been large timbers in the land. When the Kaw river was quite high the water would back up onto part of the land somewhat. Affiant further says that he has lived near this land most of the time since 1866; that he first saw this land during the war and knows that it was very heavily timbered. Affiant

worked at the ferry which used to be near the place of the old toll-bridge, below the present iron bridge across the Kaw river, connecting the cities of Wyandotte and Kansas City, Kansas, for about a year during the war.

Affiant now lives about two hundred and fifty (250) yards from said lands and in Kansas City, Kansas.

his
ELIAS x BECK.
mark.

Subscribed in my presence and sworn to before me this 29th day of December, 1882.

W. J. BUCHAN,
Notary Public.

220 STATE OF KANSAS, } ss:
Wyandotte County, }

Wm. Taylor, of lawful age, makes oath and says—

That he is forty-two (42) years of age and now lives in the city of Wyandotte, in said county, and has lived there since March last. In 1875 he moved into Kansas City, Kansas, in said county, and lived for quite awhile on and near the land in Kansas City, Kansas, in controversy between George W. Tourtelotte and George P. Allcutt, on the one side, and J. M. Mason an- N .McAlpine, on the other, being the land which Lafayette Traber sold to said Tourtelotte and Allcutt. Affiant leased a part of this land of said Traber at one time and said Mason wanted affiant to become a tenant under him.

Affiant thinks this was in the year 1879. Affiant knows that there were tenants on said land in controversy in the year 1875 and for some time after that. Affiant further says he cut wood off such stumps himself when the winter- were hard and remembers very distinctly that th-re were sycamore stumps on said lands. The land affiant refers to in this is the land which Mason and McAlpine claimed, denying that Tourtelotte and Allcutt owned it, and for this reason said Mason wanted affiant to become a tenant under him of part of the land.

his
WILLIAM x TAYLOR.
mark.

Subscribed in my presence and sworn to before me this 29th day of December, 1882.

W. J. BUCHAN,
Notary Public. [SEAL.]

STATE OF KANSAS, } ss:
Wyandotte County, }

Samuel Taylor makes — and says he is thirty-five (35) years old; that he has heard read the foregoing affidavit of William Taylor, who is a brother of affiant, and believes the same to be true.

Affiant further says that he has been well acquainted with this land since some time in the year 1878 and lived quite near it in

1878 and for some time after that—in all, about four (4) years—and in 1878 he cut wood off stumps then *off* such land.

Most of the stumps being sycamore and elms.

his
SAMUEL x TAYLOR.
mark.

Subscribed in my presence and sworn to before me this the 29th day of December, 1882.

W. J. BUCHAN,
Notary Public. [SEAL.]

Endorsed: 1734 and 1735. Seegar *vs.* Snyder; Welland *vs.* Snyder. Affidavits filed January 15th, 1883. L. C. Trickey, clerk.

STATE OF KANSAS,
County of Wyandotte, } *ss:*

Solomon Balmer, being duly sworn according to law, says—

That he remembers that several years ago he went from Wyandotte, where he then lived, over to the Bottom, where Kansas City, Kansas, now stands, in company with another man, whom he thinks was Fred. W. Drought, to appraise a piece of land; that when they came to the end of the bridge over the Kaw river they went across and about two hundred (200) yards, more or less, from the east end of said bridge till they came to two (2) stumps and stopped at the stump furthest south, then the man with said affiant said that this was the land they were to appraise; that they waited until W. H. Ryus came, and when he came he did some writing on the stump, and that they all appraised the land; that he does not recollect whether said Ryus posted any notices on the stump, but that said Ryus may or may not have done so; that he does not recollect ever having appraised any other lands in said bottoms.

SOLOMON BALMER.

Subscribed and sworn to before me, a notary public, this
221 4th day of January, 1883.

W. W. YOUNG. [SEAL.]

Commission expires March 24th, 1888.

Endorsed: Nos. 1734 and 1735. Seegar *v.* Snyder; Welland *vs.* Snyder. Affidavit of Balmer. Filed January 15th, 1883. L. C. Trickey, clerk.

(Here follows map marked p. 222.)

223 An explanation of said plat is thereto appended, of which the following is a copy:

The word "slough" in above plat shows the location of the low ground.

Lands shaded red are the lands in dispute.

No. 1. Tourtelotte house and enclosure, 25 x 54 feet.

No. 2. McAlpine's, tenant, house.

No. 3. House in which Altop lived under authority from Mrs. Street.

No. 4. House and enclosure by Mrs. Street.

No. 5. House built by Jones, as testified to in his affidavit, 1874, 1875.

No. 6. Enos Long's residence and enclosure, 1874.

No. 7. Fowler's lard-house.

No. 8. Fowler's cooper shop.

No. 9. The island, so called in the evidence.

No. 10. Sand hill on McAlpine tract, mentioned in the evidence.

No. 11. Fowler's packing-house.

No. 12. Position of stump on which attachment notices were posted, if at all.

The easterly line of the McAlpine tract, as well as the attachment claim, lies on a line 54 feet easterly of and parallel to the easterly line of Wood street extended.

The westerly line of the McAlpine tract reaches to a line thirty (30) feet easterly of and parallel to the easterly line of Armstrong St.

The westerly line of the attachment claim lacks 51 feet of reaching that far.

James M. Mason, being duly sworn, deposes and says the plat on the other side of this sheet and the specifications subjoined (on leaf above) correctly represent the location of objects and houses referred to in the evidence as shown by said evidence.

JAMES M. MASON.

Subscribed and sworn to before me this 18th day of January, 1883.

My commission expires April 5th, 1883.

[Seal of Jno. S. Cox, Notary Public.]

JNO. S. COX,
Notary Public.

224 James M. Mason, being further duly sworn, deposes and saith that the findings of the court in the case of Tourtelott *et al. vs.* Wilkins *et al.* are neither true in fact nor correct in law or equity and are not supported by the evidence or the law of the case, and affiant believes and has reason to believe that the court making such findings was prejudiced against the defendants in said cause in making up his findings.

And the said defendants hereby give notice that said defendants will present to the court on the hearing of said motions to amend attachment returns in the case of Seegar *vs.* Snyder, 1734, and Welland *vs.* Snyder, 1735, the stenographic report of the evidence given in said cause, which affiant swears is a true report of said evidence, and also will present to the court on the hearing of said motions copies of all deeds and conveyances mentioned in said report of the evidence so far as shall be deemed necessary to sustain the cause of the defendants in said Tourtelotte case. Said report is marked "Y" for identification.

J. M. MASON.

Subscribed and sworn to before me this 19th day of January, 1883.

My commission expires April 5th, 1883.

JNO. S. COX,
Notary Public. [SEAL OF NOTARY.]

STATE OF KANSAS, } ss:
County of Wyandotte, }

Solomon Balmer, of lawful age, being duly sworn, deposes and says he is aged fifty (50) years. Has been a resident of Wyandotte county twenty (20) years. Knows the ground where Kansas City, Kansas, now stands, near the iron bridge crossing the Kansas river. Recollects going onto the land several years ago—don't know just how long ago—in company with somebody. I think it was Fred. W. Drought, and Wm. H. Ryus, I think, came afterwards. We went there, as I recollect, to appraise some property. After we crossed the bridge we took a direction. Don't just recollect how far we went. Did not step off the distance or measure it in any way. It might have been two hundred (200) yards, more or less. I can't say whether it was more or less. We found a couple of stumps where we stopped at. We stopped at the one further south. The man with me said, This is the land we have to appraise. After Mr. Ryas came he did some writing on the stump. Don't recollect what it was. We appraised the land. Don't recollect how many pieces of paper he had. Did not see him put any notice on the stump so far as I can recollect. He may and may not have done so. This is all I can recollect about it. Don't remember at this time which piece of land we appraised.

This is to the best of my recollection.

SOLOMON BALMER.

Subscribed and sworn to before me this 22nd day of December, 1882.

My commission expires April 5th, 1883.

JOHN S. COX,
Notary Public. [SEAL.]

SEEGAR *vs.* SNYDER. } 1734.

WELLAND *vs.* SNYDER. } 1735.

STATE OF KANSAS, } ss:
County of Wyandotte, }

James M. Mason, Nicholas McAlpine, and John S. Cox, of lawful age, residents of said county, being duly sworn, depose and say that on or about the — day of December, 1882, together they went to the house of Elias Beck, who resides on the point northerly of the iron

bridge on the bottom lands northerly of Kansas City, Kansas, and, all being present in the house of said Beck, Mr. Beck came into the room and, on an enquiry being made of him whether he knew or could recollect what stumps were on the lands formerly claimed by Cobb and Bartlett and on the lands fenced in in 1879 by
225 Mason and McAlpine, being the same lands claimed to be attached herein, said that he could not recollect of any stump being on said land in 1874, and could not recollect any stump on said land at any time; the said Beck well knew what land was alluded to, being present on or near the land when said fence was built. Various questions were propounded to said Beck to get him to recollect stumps and other objects on the said land in 1874 and since that time, and said Beck presisted at that time that he could recollect absolutely nothing about it and did not know where the lines were in 1874; and the said J. M. Mason, and for himself only, says that he alone called on said Beck a few days before the interview when said Cox and McAlpine were present, and said Beck in answer to same and a number of other inquiries gave the same version as to his recollection of stumps and objects on said lands and location of lines in 1874.

JAMES M. MASON.
N. McALPINE.
JOHN S. COX.

Subscribed and sworn to this 3rd day of January, 1883.

D. S. YOUNG, [SEAL.]
Notary Public.

STATE OF KANSAS, }
County of Wyandotte. }

John S. Cox, of lawful age, being duly sworn, deposes and says that on the 18th day of January, 1883, he called on Elias Beck for the purpose of obtaining from him — concerning the matters connected with the pending motions for amendment of attachment returns in cases of Seegar *v.* Snyder, 1734, and Welland *v.* Snyder, 1735, in the docket of the district court of said county.

That he obtained a statement from said Buck and commenced to write it out with a view of administering to said Beck the oath and obtaining his, Beck's, affidavit thereto, but was told by said Beck to stop; that he had made an affidavit for the Tourtelott parties and would not make another. Affiant, however, saith that in the verbal statement made to him, affiant, said Beck stated that he left the neighborhood of Kansas City and went to a different part of Missouri about the first of May, 1874, and arrived at his destination about the 15th day of May, 1874, and remained away from that locality for the rest of the year 1874 and for some time longer.

JOHN S. COX.

Subscribed and sworn to before me this 20th day of January, 1883.
My commission expires March 10th, 1885.

A. W. MOYES, [SEAL.]
Notary Public.

STATE OF KANSAS, } ss:
County of Wyandotte, }

Personally appeared before me James M. Mason, N. McAlpine, Nathan Cree, and John S. Cox, who, being by me duly sworn, depose and say—

That on or about the 2nd day of December together they called at the house of Fred. W. Drought, brother of the ex-sheriff E. S. W. Drought, who has made an affidavit herein; that, being there all present with said Drought, said Drought said, in answer to numerous questions and inquiries concerning his being present in 1874 to appraise the lands mentioned in the attachments in the cases of Henry R. Seegar *vs.* Joseph E. Snyder, 1734, and C. F. Welland *vs.* Joseph E. Snyder, 1735, on the docket of the district court of Wyandotte county, that he, Drought, could not recollect of being present; had no recollection of seeing any copy of an attachment posted on any stump there; no copy or copies were ever posted in his presence on that land in his recollection.

Mr. Cree then tried to refresh the said Drought's memory by asking him if he could not recollect being present on some land nearly southerly of the iron bridge in the bottom lands of Kansas City, Kansas, together with William H. Ryus and Solomon Balmer, and in connection with this a tracing linen and correct copy of
226 the plat of the land on file at the office of the register of deeds was shown said Drought, being the plat No. 9 of said records, and the tract marked Joseph E. Snyder was then pointed out to said Drought and the question again asked whether he was ever present with said Ryus and said Balmer or either of them to appraise said tract of land or any of the lands in that locality. Mr. Drought said no; he could recollect nothing of the kind; recollected only of being present once at a later period than 1874 with some one and appraising a three-cornered and triangular piece of land nearer the Kansas river, not on this land nor any portion of it.

That no copies of attachment or other papers were posted in his presence on the land in question at any time.

If there had been he would have recollected it certain. In this connection all the circumstances, details, lines upon the plat were pointed out and mentioned, made by persons present, yet Mr. Drought could not recollect a single thing of such alleged transaction.

And, furthermore, the said J. M. Mason for himself testifies that a few days after that he met said Drought on Minnesota avenue and again asked him nearly the same questions about and concerning his recollection of said above-mentioned transaction, and Mr. Drought again repeated his answer as before, that he could not recollect anything of it.

JAMES M. MASON.
N. McALPINE.
NATHAN CREE.
JOHN S. COX.

Sworn to and subscribed to before me this 3rd day of January, 1883.

D. S. YOUNG,
Notary Public. [SEAL.]

STATE OF KANSAS, }
County of Wyandotte, } *ss:*

On this 22nd day of January, 1883, personally appeared before me Nathan Cree, of lawful age, and subscribed and swore to the above affidavit.

My commission expires April 5th, 1883.

JOHN S. COX,
Notary Public. [SEAL.]

Office of the district clerk, Atchison county, W. W. Church, clerk.

ATCHISON, KAS., *Jan'y 11th*, 1883.

J. M. Mason, Esq., Wyandotte, Kansas.

DEAR SIR: At the June term, 1874, one J. H. Brown, called Harvey Brown, was convicted of murder in the second degree.

The supreme court granted him a new trial, and at the June term, 1876, he was acquitted on a verdict of "not guilty."

The record in his case is rather large. Should you desire a copy please inform me.

Please excuse me for delay in answering; court being in session, have necessarily neglected it.

Respectfully,
W. W. CHURCH, *Clerk,*
By BOYD, *Deputy.*

THE STATE OF KANSAS, }
Atchison County, } *ss:*

The State of Kansas to the sheriff or constable of the State of Kansas:

It appearing that there are reasonable ground- for believing one "Harvey Brown" has committed the offense of deliberately, premeditatedly, and with malice aforethought shooting, killing, and murdering one Wm. H. Phillips in said county of Atchison—

You are therefore commanded forthwith to arrest said Harvey Brown and bring him before some magistrate of the said county of Atchison to be dealt with according to law.

Given under my hand this 11th day of March, A. D. 1874.

C. F. COCHRAN,
Justice of the Peace for Atchison County.

227 Endorsed: Justice court. No. —. State of Kansas, plaintiff, *vs.* Harvey Brown, defendant. Warrant. Received this writ March 11th, 1874; served by arresting the within-named Harvey Brown, and have his body before the court this 5th day of May, A. D. 1874. C. E. Atchison, constable. Filed June 8th, 1874. A. Weaver, clerk.

THE STATE OF KANSAS, } ss:
County of Atchison, }

To the keeper of the jail of the county aforesaid, Greeting:

Whereas Harvey Brown, late of said county, has been arrested on the oath of Oliver Rambo for examination on a charge of murdering and killing one William H. Phillips on or about the 25th day of September, 1870, in the county of Atchison, and has been examined by C. F. Cochran, justice of the peace in and for said county, on said charge, and I do find from the evidence produced on such examination that there are probable grounds for believing him guilty of such offense:

Therefore in the name of the State of Kansas I command you to receive the said Harvey Brown in your custody in the jail of the county aforesaid, there to remain until he be discharged by due course of law.

Given under my hand this 5th day of May, A. D. 1884.

C. F. COCHRAN,
Justice of the Peace.

May 15th, 1874.—Executed the within writ by taking *the* and committing the within Harvey Brown to the jail in Atchison county and delivering a true and certified copy to the jailer thereof.

C. E. ATCHISON, *Constable.*

Fees: Executing, .25; mileage, .20---------- .45

State of Kansas *vs.* Harvey Brown. Filed June 8th, 1884. A. Weaver, clerk.

STATE OF KANSAS, } ss:
Atchison County, }

I, W. W. Church, clerk of the district court within and for the county of Atchison and State of Kansas, do hereby certify that the above and foregoing *to be* a full, true, and complete copy of warrant and return thereon, together with order of commitment and return thereon, in the above-entitled case of The State of Kansas *vs.* Harvey Brown as fully as the same remains on file in the records of my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at my office, in the city of Atchison in the county of Atchison and State of Kansas, this 22nd day of January, 1883.

W. W. CHURCH, *Clerk.* [SEAL.]

Be it remembered that at the June term, A. D. 1874, of the district court within and for the county of Atchison and State of Kansas, and on, to wit, the 8th day of June, A. D. 1884, said court being then in session, among other things done and determined the following appears of record as of that date, to wit:

THE STATE OF KANSAS
vs.
HARVEY BROWN. } No. 6.

Information for murder.

The State appeared by its attorney, S. H. Glenn, and on leave of the court filed his information against the said defendant, and he being arraigned, the information being read aloud to him and in his hearing, and he being required by the court to plead thereto, plead not "guilty."

228 Afterwards and at said June term, 1884, of the said district court and on, to wit, the 23rd day of June, 1884, the following appears of record of that date, to wit:

THE STATE OF KANSAS
vs.
—— ——. } No. 6.

Information for murder.

And now comes the defendant and presents to the court his motion for a new trial, and the same, *was* duly considered by the court, is by the court overruled; to the overruling of which said motion the defendant, by his attorney, then and there duly excepted.

And now, by order of the court, comes the sheriff and brings herein to open court the defendant, Harvey Brown, and he being required to stand up before the court and being asked if he had any cause to show why the judgment of the court, as by law required, should not be pronounced against him, and no sufficient legal excuse being given—

It is therefore ordered and adjudged by the court here that you, Harvey Brown, be taken thence to the penitentiary of the State of Kansas and there to be confined at hard labor for the full term of fifteen (15) years from and after the 8th day of June, 1884.

And it is further ordered that the sheriff of Atchison county, upon receiving a certified copy of this sentence, that he forthwith convey the said Harvey Brown to the penitentiary of the State of Kansas.

Afterwards, at the November term, A. D. 1875, of said district court, and on the 16th day of November, A. D. 1875, said court being in session, the following appears of record as of that date, to wit:

THE STATE OF KANSAS, Plaintiff,
vs.
HARVEY BROWN, Defendant.

And now, this case coming on for trial, C. W. Johnson is appointed by the court to prosecute on behalf of the State.

A mandate from the supreme court having been received ordering a reversal of the decision of this court, the same is hereby accordingly done and an order made to have the prisoner remanded from the penitentiary to the court for trial.

And application for continuance of this cause having been made by the defendant, the same is granted by the court and the case continued until the next term of this court; that the further prosecution of this case be in the name of James H. Brown, his attorney duly excepting.

STATE OF KANSAS, } ss:
Atchison County, }

I, W. W. Church, clerk of the district court within and for the county of Atchison and State of Kansas, do hereby certify *that* the above and foregoing to be a full, true, and complete copy of plea, judgment, and sentence of the court, together with order for new trial, and for the prosecution to be conducted in the name of James H. Brown, as fully as the same remains on file in and of record in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at my office, in the city of Atchison, county of Atchison and State of Kansas, this 18th day of January, A. D. 1883.

W. W. CHURCH, *Clerk,*
By J. J. BOYD, *Deputy.* [SEAL.]

To J. M. Mason.
The transcript of certain record and papers in The State of Kansas *vs.* Harvey Brown. $1.75.
Paid in full.

W. W. CHURCH, *Cl'k.*

229 In the District Court of Wyandotte County, Kansas.

HENRY R. SEEGAR }
vs. } 1734.
JOSEPH E. SNYDER }

and

C. F. WELLAND }
vs. }
JOSEPH E. SNYDER. }

James T. Johnson, of lawful age, being duly sworn, deposes and says—

That he has been for twenty-one (21) years acquainted with the lands on the bottoms — northerly part of Kansas City, Kansas, being the lands lying south and southerly of the present iron bridge and between where Fowlers and Company's packing-house now stands

and westerly to the Kansas river, and also the land a little southwest of said packing-house.

That he lived near that ground from 1861 to 1864; I recollect a higher piece of ground, where Fowler and Company's ice-houses now stand, lying westerly of Armstrong street extended; that there was a slough or piece of low land between that ground last mentioned and a higher piece easterly of that, through which the Kansas river or a part thereof has in high water run through ever since my recollection; that when the spring rises come some years this slough or low piece of ground and the river or a part thereof would run through and around there from a point above the said ice-house to a point near the easterly end of the iron bridge; I recollect heavy floods in the spring of 1862, about 1876 and 1881 and at several other times, as many as half a dozen times, within my recollection, that the river come over this bottom land; that at times it would wash out large amounts of earth and at other times it would leave some deposit.

I think it left a good deal in 1881; that by this from time to time considerable changes were made in the appearance of the surface of this ground; that by reason of this it would be difficult for any person going onto the ground to locate any objects or landmarks exiesting in former years. I know that I myself had a lot there in 1862, and I am aware that I could not locate it now from the recollections of the surface, and there are no trees or landmarks there now which existed in 1861 and 1862.

I am of the opinion that in 1874 there was no timber or stumps standing in that slough in 1874. There was timber on the high grounds on both sides of the slough; recollect none in the low benches in the slough where the river run around.

JAMES J. JOHNSON.

Subscribed and sworn to before me this 17th day of January, 1883.

My commission expires April 5th, 1883. That the affiant is ex-county commissioner of Wyandotte county.

JOHN S. COX,
Notary Public. [SEAL.]

Endorsed: Henry R. Seegar *vs.* Jos. E. Snyder. 1734. C. F. Welland *vs.* Jos. E. Snyder. 1735. Affidavits and proof. Filed January 25th, 1883. L. C. Trickey, clerk. J. M. Mason, attorney for interpleaders, and appears to motion to amend *to* attachment returns.

230 STATE OF KANSAS, } ss:
County of Leavenworth, }

John C. Douglass, of lawful age, being duly sworn, deposes and says that since about the 28th day of June, A. D. 1877, he has been

acquainted with the certain tract of land lying between James street and Armstrong street extended, northerly part of Kansas City, Kansas.

That he bought a tax claim on this land in 1870. The tract mentioned is about four (4) acres, more or less, described as follows:

Commencing at the northwest corner of land deeded by D. E. James to James F. Joy, thence south sixty-one and one-half (61½) degrees west five hundred and eighty feet (580) two inches (2); thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east five hundred and eighty (580) feet and two (2) inches; thence north twenty-eight and one-half (28½) degrees west to the beginning; that about the 28th day of June, 1877, he went upon said land for the purpose of taking possession of the same and to let it or part of it to tenants, and found a small house on a part of it, he thinks the westerly side of Wood street extended and north of the southerly boundary of said land, as he then understood the boundary, and he thereupon let this house and all the vacant land belonging to the same to a tenant by a verbal lease for the purpose of securing and holding the possession of the land; that as well as he can recollect there were no enclosures or improvements except this small house westerly of Wood street on this land, although he thinks there were houses and improvements on the easterly side of Wood street extended and on this land, and that the whole tract, as affiant then understood, was claimed and in fact held by tenants of Cobb and Bartlett; that affiant'- best recollection is that at the time the ground westerly of Wood street in said tract was low, sandy, and destitute of trees, stumps, and fences.

And further deponent saith not.

JOHN C. DOUGLASS.

Subscribed and sworn to before me this 26th day of January, 1883. My commission expires December 27th, 1886.

N. H. WOOD, [SEAL.]
Notary Public in and for said County of Leavenworth.

Endorsed: Henry R. Seegar *vs.* Jos. E. Snyder. 1734. C. F. Welland *vs.* Jos. E. Snyder. 1735. Affidavit of J. C. Douglass for Mason and McAlpine. Filed this 26th day of January, 1883. L. C. Trickey, clerk. J. M. Mason, attorney.

231 In the District Court of the 10th Judicial District of the State of Kansas, Sitting within and for the County of Wyandotte.

HENRY R. SEEGAR, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant.

CHARLES F. WELLAND, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant.

Transcript of the depositions of W. H. Ryus and Fred. W. Drought, taken by Morris E. Jones, law stenographer, under an agreement and stipulation of the parties hereto, at Wyandotte, Kansas, on the 19th day of December, 1882, and the 2nd day of January, 1883, respectively, and before John S. Cox, notary public, in the above-entitled cases and in the matter of the interplea and cross-motion to set aside all proceedings for want of jurisdiction and in support of the motion by plaintiff to amend attachment returns herein.

And the said W. H. RYUS, being produced, sworn, and examined, deposed and said:

Direct examination by Mr. CREE:

Q. State, Mr. Ryus, what official position you filled in this county in May, 1874.

A. Under sheriff.

Q. State what recollection you have, if any, as to making service of levy of certain orders of attachment in the case of Henry R. Seegar *vs.* Joseph E. Snyder and C. F. Welland *ve.* Joseph E. Snyder in that year. Were those levies made on the same day and at the same time?

A. Well, that is a matter of record. I cannot recollect a matter of that kind.

Q. My question relates to the service of the attachments in those two (2) cases.

A. Yes, sir; I recollect making them.

Q. Mr. Ryus, just state what you did in those cases.

A. Why, I went on the ground. I summoned two appraisers and went on the ground; swore the appraisers to appraise the property; made my levy on the land; appraised the property and posted notices on the land.

Q. Well, anything else?

A. I guess that is all.

Q. State what notices you posted, Mr. Ryus.

A. A copy of the attachment.

Q. In which case did you post a copy of the attachment, as you say?

A. Well, I presume if I posted any I posted in both cases.

Q. Have you any recollection which one you posted first?

A. No; I could not say.

Q. Are you certain, Mr. Ryus, that you posted more than one copy of the order of attachment?

A. Well, I never made an attachment; never did make one without taking my copy and leaving it with some one or posting it on the place; always made a copy.

Q. Please answer the question. Are you certain that you posted more than one copy of that order of attachment? Is your recollection distinct that you did?

A. Oh, no; I would not swear that I did or did not. The thing that I mostly recollect is posting the notices. I could not swear
232 that I had two copies or three or that I had any particular one, but the general routine of the business was to post a copy in every case, and I remember the posting. As I say, it is almost impossible for me to answer that. The general rule was to make copies for posting, and I never went away from my office without making copies, because I had to leave them with the parties or post them on the premises.

Q. State whether or not you distinctly remember of posting more than one copy at this service.

A. Well, that is a pretty hard thing to remember; my impression is——

Q. State what you distinctly remember, if anything.

A. That I posted notices in both cases, but I wouldn't swear that I did or did not.

Q. After this lapse of time do you distinctly remember about posting a copy in either of those cases?

A. Yes, sir; I do.

Q. In which case?

A. Well, sir, I recollect of making my copies and taking them there, and I recollect posting the copies.

Q. Answer the question, please, in which case.

A. I recollect posting the copies there, but of course I cannot recollect how many or whether there was one, two, or more.

Q. In which case do you recollect posting copies? I want to get your distinct recollection.

A. I have no recollection about which case, only I recollect making the copies and taking them there. I cannot say whether I posted one copy or two copies, but my general rule was to make copies in every case, and I recollect posting copies on a stump, or a copy; I could not say. I recollect distinctly more than one copy, but I am satisfied I posted copies in both cases, because it was my general custom to post a copy in every case, and I remember making the copies.

Q. You do not, or do you, distinctly remember of posting in both cases?

A. I distinctly remember posting notices there at the time I levied on the land. I think it is very probable that I posted notices in both cases, but I would not swear that I did or did not. I know that I posted notices.

Q. If you omitted posting a copy in either case which one was it?

A. I hardly think it probable that I omitted posting in either case. I think it probable that both were posted. I do not think I omitted to post them, because it was my custom to do so always.

Q. I will ask you, Mr. Ryus, if it is from your usual custom of doing the business that you now speak or your distinct recollection of posting the two orders of attachment in those cases.

A. I recollect of making that levy and posting the notices of attachment. I recollect tacking them onto a stump on that piece of ground, as there was no building on it, no occupant of it, no one in possession, but, as I said before, I would not swear I did have more than one copy.

Q. If you did not have but one copy in which case was that copy?

A. I may have had both copies; my general rule was to make copies in every case, and I think I did in that case, but it is pretty hard for me to say I recollect of posting the two copies or just one, though I know I posted copies.

Q. But you are not willing to swear how many copies you posted?

A. No; I will not swear that I did post two copies there, only from my general routine of business; I cannot recollect it.

Q. Did you or did you not make any memorandum in any record or anywhere else of what you did at that time, Mr. Ryus?

A. Well, only on the paper; there is a kind of memorandum there, which was never finished; in our account book I did not forget to charge up for doing the work; that the book shows for itself, but I am satisfied that the service in that case was made
233 all correct but the signing of the return, and that was not signed.

Q. Have you examined the papers in these cases since you returned them into court in 1874?

A. Yes, sir; I saw the papers four (4) years ago. I saw the papers and talked about them with Mr. Cobb. Mr. Cobb first called my attention to the fact that I had never signed that return. He asked me then how I made that service, and I told him how I made it.

Q. What did you tell him?

A. I told him I made it by posting a copy on the place. He says, You have never signed the return. I said, "I cannot help that now. It's so long ago it will have to be amended through the court; I can't sign it now."

Q. Now, where did you make out your copies?

A. In my office. When Mr. Betts gave me the papers I at once made my copies.

Q. Where did you find your appraisers?

A. I think I met Mr. Bolmer on the bridge or close there, about the land somewhere.

Q. What sort of a stump was this on which you posted what you did post?

A. It was a common, ordinary stump.

Q. How high was the stump?

A. I presume it was two (2) feet or two and one-half (2½). It was an ordinary stump.

Q. Large or small?

A. I should think the stump was about eighteen (18) inches across.

Q. On what part of the land was the stump situated?

A. It was situated partly in a hollow. We went through the hollow. It was right on the side of a bridge. I know we went across the hollow, and when I read the notice I sat on the stump. We were on the land several minutes.

Q. Was it near the southern or the northern boundary, or which boundary was it nearest to?

A. I do not know.

Q. How was it with respect to the center of the land, near the center or to one side?

A. I cannot say.

Q. How was it with respect to the river, near the river or not—the Kansas river?

A. It was some little ways.

Q. How far?

A. I do not know.

Q. Was it nearer to the river than to James street?

Q. It was farther to the river than to James street, I think.

Q. On what part of the stump did you post what you did post?

A. I nailed it right on top of the stump.

Q. Do you recollect what kind of wood the stump was?

A. No, sir.

Q. Do you recollect whether you had the land all appraised all in one body or separately?

A. I think it was all appraised.

Q. As one body?

A. I think so.

Q. This is your return to the order of attachment?

A. Yes, sir.

Q. You see, it is appraised in three (3) different tracts.

A. Yes, sir.

Q. Did you leave a copy on each of the tracts, Mr. Ryus?

234 A. No, sir; it was all one tract of land, but in three (3) descriptions.

Q. What possession did you take of that land?

A. By virtue of the attachment I levied on the land.

Q. What else?

A. Swore the appraisers and they appraised the land, and I posted my notices on the premises.

Q. That is all you did in reference to taking possession of the land?

A. All I could do.

Q. How is that?

A. I could not move in or put anybody in possession.

Q. What control did you exercise over that land, if any, at the

time the judgment was rendered in this case or at the time you made the return to the order of attachment?

A. No control more than the papers gave me control of it.

Q. Are you certain there was no occupant on any part of the land?

A. None that I could see.

Q. Were you or were you not aware at that time that it was a part of a large tract of land that Cobb and Bartlett claimed, some land there adjoined and in addition to it?

A. Yes, sir; I knew all about the land, for I had looked over the land. Mr. Cobb wanted to sell me the land, and I had partly bargained for some.

Q. I will ask you if there was not a cabin on the part claimed by Cobb and Bartlett.

A. There was no cabin on this land. There was a fence there on the line or near the line. I was not certain whether it was on the line. There was a cabin or an old house on the part that Cobb and Bartlett claimed, but there was no house on this land.

Q. There was a cabin on what is called the Cobb and Bartlett tract, of which this is a part?

A. Well, I don't know whether it is a part of this tract. There was a cabin on the land claimed by Mr. Cobb.

Q. Was there not persons living in it?

A. There may have been; I do not know. It may have been empty or may have had some one in it; I don't know. I know it was not on this piece of land.

Q. Were there many stumps on that land at that time?

A. Oh, not many. There were a few.

Q. How far from the street was this stump?

A. I don't know, sir.

Q. How far was it from James street, or any other street?

A. I could not say.

Q. How far was it from that cabin?

A. I could not say.

Q. Now, do you remember going upon the land with the appraisers and declaring that you attached it at the suit of the plaintiffs or in any other similar words?

A. Yes, sir; I do.

Q. Mr. Ryus, do you remember a conversation you had with Mr. McAlpine and myself in your office at the hotel on or about the 25th of November?

A. Yes, sir.

Q. Do you remember me asking you in that conversation how many copies of the order you posted?

A. Yes, sir.

Q. What was your reply?

A. I said I remembered posting copies on a stump on that piece of land.

Q. Did you not say, Mr. Ryus, that you posted but one;
235 that you made it out there?

A. Well, it might have been one in each case, if you spoke of one case.

Q. Did I not ask you where you posted the orders of attachment?

A. Yes, sir.

Q. Did I not ask you then how many copies you posted?

A. Yes, sir.

Q. Did you not say, "One, and I made it out there"?

A. Yes, sir.

Q. How do you know, Mr. Ryus, that this stump where you left the copies was on the land? How did you ascertain that it was on the land?

A. Because I knew where the land was and I knew when I was on the land.

Q. How did you ascertain the boundaries of the land?

A. By the plat of the land; by knowing where the land was and the boundaries of it.

Q. Who showed you the boundaries of the land?

A. Col. Cobb. He had a map of the land.

By Mr. MASON:

Q. When you went over to that land which of the bridges did you go over—the old bridge or the present iron bridge?

A. I went over the iron bridge.

Q. After you crossed the iron bridge what direction did you take to get onto the land?

A. Southeast.

Q. How far did you go in a southeasterly direction to get onto the land?

A. I don't know, sir.

Q. You made no measurement at the time?

A. I made no measurement at the time.

Q. Did you go to the bank of the Missouri river at that time for any purpose?

A. Yes, sir.

Q. For what purpose?

A. To get over to the land.

Q. Did you go clear to the bank of the Kansas river?

A. Yes, sir, and crossed it.

Q. After you crossed it did you go down the bank opposite this land?

A. I didn't go down the bank.

Q. You didn't find any monument there locating any line?

A. I didn't find any monument. Down the bank ain't towards the land, either.

Q. How far was the stump you say you think you posted on from the Kansas river?

A. I don't know, sir.

Q. Do you recollect a conversation you had with me upon the street; right before my office here?

A. I do, sir.

Q. Did you tell me then that you posted one copy only of the order of attachment?

A. No, sir.

Q. Did you not tell me that if I could get the papers or that if you could see the papers you could tell me which one of them you posted—that you could not tell which one you posted—but that if you could see the papers you would be able to tell?

A. I told you that probably I posted both, but that I could not recollect.

Q. Was something said about if you could see the papers you could probably tell which one you posted in?

A. Yes, sir. Do you want all of that conversation?

Q. No; I want to ask you if we did not have another con-
236 versation at another time. Did you not have a conversation with Mr. Cree and Mr. McAlpine at that time and with myself at another time in which you stated that the stump on which you supposed you posted the notices of attachment was nearer the Kansas river than James street?

A. No, sir; I told him the stump on which it was posted was not very far from Wood street.

Q. Which side of Wood street?

A. On the west side of Wood street.

Q. On the west side of Wood street extended—that is, what it would be if it ran through?

A. Yes, sir.

Q. You knew, then, that Cobb and Bartlett claimed that land at one time because they showed you the boundaries of it?

A. No, sir.

Q. Did Cobb and Bartlett want to sell you some of it?

A. No, sir; Cobb and Bartlett did not try to sell me any of it. Col. Cobb, I said, did. Col. Cobb and I were on the trade for a part of the land.

By Mr. FERREY:

Q. Do you mean a part of the land attached in these two (2) cases?

A. No, sir.

Mr. FERREY: I object.

By Mr. MASON: Then he did not show you the boundaries of this land?

A. Yes, sir; he had a plat of both pieces.

Q. You stated a few minutes ago he did not, did you not?

A. No, sir; I didn't say any such thing. You said Cobb and Bartlett, and I did not have anything to do with Bartlett.

Q. Mr. Cobb took you down on the land?

A. Mr. Cobb did not take me; I took myself.

Q. Did Mr. Cobb go with you?

A. Yes, sir; we went together.

Q. What year was that?

A. About the time of this attachment, but before the attachment was made.

Q. He showed you the boundaries of the four acres he claimed down there?

A. Yes, sir; we had a map of the Snyder tract and a map of the bend in the road there.

Q. I have a little map here of the Snyder tract. You mean by the Snyder tract the piece marked "Joseph E. Snyder" on the plat on file in the office of the register of deeds?

Objected to as immaterial.

Q. This is what is called the Snyder tract?

A. Yes, sir.

Q. That was claimed by Cobb and Bartlett?

A. Part of it.

Q. It was laid down all as one tract on the plat?

A. I do not know, sir.

Q. Well, between what two (2) streets did the Snyder tract extend? Please point it out.

A. No, sir; I can't point it out.

Q. Wasn't it bounded on the east by James street?

A. It was along James street Col. Cobb wanted to trade me a piece.

Q. What was the western boundary of the four (4) acre tract?

A. I do not know.

Q. What was the northern boundary of the Snyder tract?

A. I cannot recollect.

Q. Whose lands bounded it on the north?

A. I do not know?

Q. What was the southern boundary of the Snyder tract?

A. I do not know.

237 Q. How far was it from the bridge?

A. I did not measure it.

Cross-examination by Mr. FERREY:

Q. Have you seen these returns, Mr. Ryus?

A. Yes, sir.

Q. You state in the returns that these orders of attachment were received by you on the 16th day of May, 1874?

A. Yes, sir.

Q. If both were received that day did you post both notices on the property on that day?

A. I think I did; I would not swear I did from my recollection.

Q. How long were you connected with the sheriff's office?

A. Eight (8) years.

Q. Both as sheriff and as under sheriff?

A. Yes, sir.

Q. Did you ever, during your service as sheriff or deputy sheriff, serve a writ of attachment in any but the regular way, by either leaving a copy with the occupant or posting it on the premises?

Objected to as incompetent.

A. Not to my knowledge, sir.

Q. The appraisers were both sworn on the same day and made their return on the same day in both cases?

A. Yes, sir.

Q. And I understand you to say that, to the best of your recollection, you posted notices in both cases?

A. I recollect posting notices; and judging from my usual course of business I should say I did.

Q. What was the rest of that conversation you spoke of having with Mr. Mason down-stairs?

Objected to as immaterial.

Q. I mean the conversation he called your attention to in the direct examination.

A. I stated a part of it—all he asked for.

Q. State it all to us.

A. I ain't going to do it.

Q. Why not?

A. Because I don't want to.

Q. You refuse to give that, do you?

A. I don't think it is best; it would make you blush.

Re-examination by Mr. CREE:

Q. How long had you been under sheriff in May, 1874?

A. I don't know, sir; I was appointed under sheriff as soon as Mr. Drought was elected, and on his re-election I was appointed again; I do not remember the dates.

And the said F. W. DROUGHT, being produced, sworn, and examined, deposed and said:

Direct examination by Mr. MASON:

Q. State your name, age, residence.

A. F. W. Drought; Wyandotte, Kansas; my age is forty-two (42).

Q. Are you the same F. W. Drought who made the affidavit before the district clerk?

A. About what?

Q. In the pending motion in the case above entitled, this week.

A. I do not know what case you mean; the one where Tourtelotte is concerned?

Q. Yes.

A. Yes, sir; I am the same Drought.

Q. Do you recollect being called upon by Mr. Cree, Mr.
238 McAlpine, Mr. Cox, and Mr. Mason?

A. Yes, sir; I do.

Q. On or about the 1st of this month, wasn't it?

A. No, sir; it wasn't the first of the month.

Q. State when it was.

A. Some time last month; I should judge it was about two weeks ago; maybe more.

Q. Do you recollect what you told those gentlemen when they called on you?

A. Yes, sir.

Q. Go on and state what you told them.

A. I told them that I could not describe the land, and that I had no recollection of it without seeing the land.

Q. Go on and state further what was said.

A. Well, you had a map there and you tried to describe it to me, and I told you I could not tell anything about it; that I had appraised several pieces of land over there.

Q. State all that was said.

A. Well, I could not do that. The only thing I could recollect you wanted me to describe the piece of land and wanted to know whether I signed a piece of paper on the land, and I told you I had signed all I ever signed, except one piece here in town, when the ink got spilled, and we come to the office and signed it.

Q. Did you say you served these papers on the land?

A. No, sir; I said that I had appraised several pieces of land, and that I could not place this land on the map and could not tell without seeing the land.

Q. Did Mr. Cree at that time call your attention to the names of Sol. Bolmer and William H. Ryus as persons being present when you appraised certain land?

A. Yes, sir; he may have done so.

Q. Did you not tell him you could not recollect anything about it?

Q. I told him I could not place the land he was speaking of on the map; that I had appraised several pieces and named several of them. I told him that I could not place that.

Q. What map was it they showed you?

A. I do not know; I did not look. I looked at what you were pointing out, but I did not look to see what map it was.

Q. You saw the map?

A. Yes, sir.

Q. Did you see the tract marked on it "Joseph E. Snyder"?

A. I saw the tract marked "Snyder" on it.

Q. Do you know what bounds the land that you appraised in those attachments suits? Do you recollect the boundaries?

A. No; but I could show you the same piece of land. I might not be able to walk in the exact footprints, but I could show you the land that was shown to us.

Q. How did you go to get to the land?

A. When I went to appraise it?

Q. Yes.

A. I went across the bridge.

Q. What bridge?

A. The iron bridge.

Q. After you had left the approach to the bridge which way? You could not jump right off at the end of the bridge and go south, could you?

A. Not very handy.

Q. There is a high approach, isn't there, for some distance?
A. Yes; some distance.
239 Q. How far?
A. Not very far. You can go down the banks.
Q. How did you go over from the end of the bridge?
A. Right through where Fowler's yards are now.
Q. What point of the compass did you take?
A. I didn't have any compass.
Q. You do not know which point of the compass?
A. No; I could not tell the points of the compass there now.
Q. You do not know the points of the compass there?
A. No, sir.
Q. Do you know what is the nearest line of that land from the iron bridge?
A. No, sir?
Q. Do you know how far it is from the bridge?
A. No, sir.
Q. Never measure it?
A. No, sir.
Q. Do you know how far the line nearest the Kansas river is?
A. No, sir; I never measured that.
Q. Do you know what bounds the land on the south?
A. I do not know what land bounds it on the south.
Q. Do you know what bounds it on the east?
A. Well, there was a part of an old fence on the east.
Q. Some one was in occupation of some portion of the premises?
A. No, sir; it was not so stated at the time.
Q. Well, stated or not, do you not recollect there was somebody on the land?
A. No, sir.
Q. You do not know whether that fence was on the line or not?
A. No, sir.
Q. How long was the fence?
A. I do not know. There was a piece of old fence there.
Q. You do not know how many rods?
A. No, sir.
Q. You do not know where the eastern boundary of it was, as regards the streets?
A. Well, it was west of James street. I do not know how far.
Q. You do not know how far?
A. No, sir. The deputy sheriff showed us the lines and then declared he attached the land and had us appraise it.
Q. The only way you knew where the lines were was what you say the deputy sheriff showed you?
A. Yes, sir.
Q. Well, of your own knowledge you did not know where the lines were?
A. No, sir; I don't know the lines of my own lots unless there was stakes set. I could not swear to them unless the stakes were set.
Q. There was none on this land?

A. No, sir; not that I saw.
Q. Nobody pointed out any stakes to you?
A. No, sir.
Q. To get to the land did you go over a fence?
A. No, sir.
Q. Was there any fence there?
A. No, sir; there was a piece of fence on the east.
Q. About a rod?
A. I don't know how much.
Q. Now, let me ask you what you mean by the term "south sixty-one and one-half (61½) degrees west;" do you know the meaning of that?
A. No; I do not.
240 Q. You do not know what it is?
A. Well, it is a little more south than west.
Q. Do you know the meaning of the term "south twenty-eight and one-half (28½) degrees east"?
A. Well, that is a little south of east, ain't it?
Q. I am examining you.
A. Well, I wanted to know if it was correct.
Q. Do you know the meaning of the term "north twenty-eight and one-half (28½) degrees east"?
A. Well, then, it don't run directly north, but a little east of north.
Q. It is land running a little east of north?
A. Yes, sir.
Q. Do you know how wide that tract was you thought you appraised?
A. I do not.
Q. Do you recollect between what two streets it would have been located?
A. It was west of James street. That is all I know.
Q. You don't know anything else?
A. Only that I appraised it and signed my name to the appraisement on a stump there.
Q. All you know about the boundaries is what Mr. Ryus told you?
A. Yes, sir.
Q. Nobody else did ever point out any monuments or any boundaries to you?
A. No, sir.
Q. At no time?
A. No, sir.
Q. All you know is based upon what Mr. Ryus told you?
A. All I know is what he told us. He told us there was the land to be appraised and showed us about the lines.
Q. Now, you recollect that Mr. Cree and myself, at the time we called on you, made a good many inquiries of you and mentioned the circumstances of that appraisement and the persons that here alleged to have been with you. Didn't we, as much as possible to, try to get you to recollect?

A. Yes, sir.

Q. At that time you did not recollect anything about it?

A. Yes, sir; and I would not recollect anything about it to you or Mr. Cree now if I was not on oath.

Q. You have a prejudice against us, have you not?

A. Yes, sir; against both of you.

Q. Have you a prejudice against Mr. McAlpine, too?

A. No, sir.

Q. But you think Mr. Cree and Mr. Mason are pretty bad men?

A. Well, that has nothing to do with this case.

Q. Did we not ask you in a kindly way for what we wanted to know of you?

A. Well, it would not do to come in any other way in my own house.

Q. Well, did we not come in that way—in a gentlemanly way—and ask what your knowledge was?

A. I am not supposed to give my knowledge for nothing.

Q. Well, you are paid for your coming?

A. Yes, sir; when I demanded it.

Q. But now your mind has been illuminated, and you recollect everything when you could not recollect anything then?

A. Yes, sir; because I went on the land and seen it.

Q. Has there not been a great many changes since the appraisement?

A. There has been around it, but not so much on it.

Q. You could not tell the lines now, could you?

241 A. Yes, sir.

Q. You say there was a stump there the notice was posted on. You think there was?

A. I not only think it, but I know it. They were posted on a stump.

Q. Well, such stump as you do recollect there, was that in the center of the tract?

A. It was right upon the edge of a swag that ran through there.

Q. Was it in the swag?

A. No, sir; it was upon the edge of the swag—upon the bank.

Q. Was it on low ground or high ground?

A. It was all low land there; at least I would call that whole bottom low land.

Q. There are some benches there—higher ground than the rest?

A. Yes.

Q. Well, from your knowledge of the boundaries pointed out to you was it in the center of the tract or near the edge, and, if so, what edge?

A. Well, it was more to the east end of the land than it was to the center. If you want to go over there I will show you within twenty (20) feet of where it was.

Q. Mr. Ryus testified that it was west of Wood street. What do you testify to?

A. Well, I do not know where Wood street runs through.

Q. Well, he does.

A. I suppose he does or he would not swear to it.

Q. You have no doubt but what Mr. Ryus told the truth?

A. I do not doubt it; I have no reason to doubt it. I do not know where Wood street goes along.

Q. Well, was it nearer to the north line than to the south line?

A. That I could not tell exactly; but I know there was a stump on the land.

Q. That is the land some one pointed out to you?

A. Yes, sir.

Q. You do not know of your own knowledge that it was the land attached?

A. I know it was the land we appraised. I do not know whether it was properly described in the attachment or not.

Q. You cannot give a description of it?

A. No, sir.

Q. Do you know in what direction the north line of the land or the line nearest the bridge ran?

A. I could not tell. If it was the north line it must have run somewhere near east and west.

Q. There have been some floods on this land since 1874?

A. I do not know whether there has been or not. The water may have backed up through the slough.

Q. The river has from time to time run through the low ground there?

A. I never seen it run through that part of the bottom. It might have backed up into that slough, but I never seen the river run through there.

Q. It never ran across the land you appraised?

A. No, sir.

Q. Then it was somewhat higher ground where you made the appraisement?

A. I say the water may have backed up on it, but the river never ran through there.

Q. Didn't it run through there in 1881?

A. I do not know. I never was on it after the water broke through from the Missouri river that spring until it had gone down again. I was sleeping in the daytime and watching at night.

242 Q. You cannot give the points of the compass as to the way that land lay nearest the bridge?

A. No, sir.

Q. Can you give the direction from Bigger's packing-house?

A. It was west of it from the packing-house, but I could not give the points of the compass.

Q. You say there were no stakes there setting out the corners?

A. I say I did not see any; Mr. Ryus walked about the land and showed it to us.

Cross-examination by Mr. FERREY:

Q. You were one of the appraisers who appraised the property in these two attachment cases?

A. Yes, sir.

Q. Who was your fellow-appraiser-?

A. Mr. Sol. Bolmer and Mr. Ryus.

Q. You and Mr. Bolmer were the appraisers and Mr. Ryus was the deputy sheriff?

A. Yes, sir; and appraiser.

Q. You went there with Mr. Ryus, did you?

A. Yes, sir.

Q. What did you do there?

A. He proclaimed that he attached that land and told you to appraise it.

Q. Was there anybody in possession of any part of the property?

A. No, sir; not the land we saw; there was no one in possession.

Q. How did he serve the notices of attachment there?

A. By nailing them on a stump.

Q. A copy in each case?

A. Yes, sir.

Q. Any one living on the property at the time?

A. No, sir.

Q. No house on the land?

A. No, sir; no house there.

Q. It was vacant, unoccupied land?

A. Yes, sir.

Q. Where did you sign the appraisement, you and Mr. Bolmer?

A. I signed it on the stump. I laid the paper on the stump and signed it, and Mr. Bolmer, I do not know whether he signed it on a book or on a stump, but we all signed that piece of paper with a pencil, as we did not have any ink there.

Q. You all signed it on the property?

A. Yes, sir.

Q. You have seen these returns since?

A. Yes, sir.

Q. Within a few days?

A. Yes, sir.

Q. That has refreshed your recollection so that you distinctly remember it?

A. Yes, sir; I remember now distinctly of signing that paper with a pencil and where I did it.

Q. In this conversation that Mr. Mason speaks of you could not recognize the property from a plat he showed you?

A. No, sir.

Q. But since then you have seen the papers?

A. Yes, sir; and been upon the property.

Q. At the time Mr. Cree and Mr. Mason came to see you they did not show you the original papers in the attachment suit?

A. No, sir; they showed nothing but a map, and it might have been a map of Armourdale or Rosedale, for all I knew. No,
243 not Rosedale, because I noticed a river on it, but I could not tell what it was.

Re-examination by Mr. MASON:

Q. Did you read the notices posted on the stump?
A. No, sir.
Q. It is not customary for appraisers to read them?
A. Not that I know of.
Q. When we showed you the map spoken of did we not call your attention to the iron bridge and ask you how far the land was from the bridge?
A. Yes, sir; I recollect that now. You pointed out the iron bridge, but from my knowledge I could not tell what the map was.
Q. We pointed out the piece marked "Snyder tract."
A. Yes, sir; and I told you at the time I could not place it on the map, but I would know it if I had seen it—that is, that I would know the property.
Q. You cannot recollect the boundaries of the land now as it stood at the time you appraised it?
A. I could show you pretty nearly the boundaries that were shown me at that time, as I said before; I could not walk in the same footprints, but I could come within a few feet of it.

By Mr. CREE:

Q. In that conversation do you recollect speaking of *about* going over and appraising the land with Mr. Bolmer and Mr. Ryus?
A. Yes, sir.
Q. Did you not also in the course of that conversation—did I not ask you if you had any recollection of any papers, any notices, being posted on the land when you appraised it?
A. No, sir; not to the best of my recollection you did not. You had very little to say there that night. Mr. McAlpine asked me and I told him about spilling the ink when we appraised a piece here in town.
Q. Do you recollect my asking you that question?
A. No, sir; I do not.
Q. Are you certain I did not ask you that question?
A. No; I am not certain.
Q. You say you did not recollect?
A. I told you I could not recollect the circumstances about that piece of land, but if I seen it I could.
Q. Did you not in reply to that question about posting the notices or papers on the land, did you not say there was nothing posted?
A. No, sir; I did not say there was nothing posted.
Q. In that conversation you did not recollect much about the appraisement or about the circumstances?
A. I recollected, as I told you, about appraising several pieces of land, but I told you I could not place this.
Q. Do you recollect the cases of Snyder and Seegar?
A. After I seen the papers, then I recollected all about it.
Q. Did I understand you to say that you did not answer our in-

quiries friendly because you were unfriendly to Mr. Mason and myself?

A. No; I said I would not answer your questions. I did not say I did not do it, but I would not do it voluntarily.

Q. Do I understand that you refrained from answering us from want of knowledge or because of your feeling against us?

A. I did not recollect it then, because I had not seen the papers, and I did not feel like giving you any satisfaction, anyhow. I could not answer clearly when I did not recollect, and I did not feel inclined to give you a satisfactory answer. Any man that will do me a dirty trick I do not intend having revenge, but I will never do him any good, if I can help it.

Q. Is your ill feeling towards me based upon my connection with Mr. Mason in this suit?

244 A. No, sir; it has nothing at all to do with this suit.

Q. You have that ill feeling aside from my connection with this suit?

A. I have no interest whatever in this suit.

Q. I say you have that feeling aside from my connection with this suit?

A. Yes, sir; I have.

Q. Have had for some time?

A. Yes, sir; and you recollect the time, too—the time you busied yourself so much to get a fellow to sue me for false imprisonment.

Q. This ill feeling towards me was the only reason you would not answer satisfactorily that night?

A. No, sir; I did not recollect the circumstances that night, because I would have answered for Mr. McAlpine's sake. I have no ill feeling towards him, and McAlpine done more talking than any one, and Mason did the next most talking.

By Mr. MASON:

Q. Did I not ask you subsequently, when I met you up near Sixth (6th) street and Minnesota avenue, if you could recollect anything about this transaction?

A. I told you I had nothing to turn my mind to then. That was my answer.

Q. You did not give me any information?

A. No, sir; I did not.

Q. You did not say you could not recollect?

A. No, sir; I said I had nothing to turn my mind to it.

245 In the District Court of Wyandotte County, State of Kansas.

C. F. WELLAND, Plaintiff,
vs.
JOS. E. SNYDER, Defendant.

Bill of Exceptions.

Be it remembered that on the 4th day of December, 1882, the above-named plaintiff filed his motion in said cause in words and figures following:

C. F. WELLAND, Plaintiff,
vs.
Jos. E. SNYDER, Defendant. } No. 1735.

Now, at this day, comes the plaintiff in the above-entitled cause and moves the court for an order allowing the sheriff of said county, who served the process in this case, to amend and perfect according to the facts and truth of the matter the return on the writ of attachment, dated May 16th, 1874, issued herein.

L. TRABER,
Attorney for Plaintiff.

Upon said motion were the following endorsements: 1735. C. F. Welland *vs.* Jos. E. Snyder. Motion for order of leave *of* sheriff to amend attachment return. Filed Dec. 4, 1882. G. W. Betts, clerk. L. Traber, attorney for pl'ff.

Also on said 4th of December, 1882, the notice to Teresa Snyder, widow of Jos. E. Snyder; Joseph D. Snyder, Eugene Snyder, and Fred. and Caspar Snyder, together with proof of service thereof, was filed in said cause, a copy of which notice and proof of service *are* hereto attached and made a part hereof and marked "A."

Also on the 5th day of December, 1882, the affidavit of W. H. Ryus, a copy of which is hereto attached and marked and made a part hereof, was filed in said cause.

And said affidavit was a part of the evidence introduced in support of the various motions to amend the return of the attachment mentioned in the above-written motion; also there was other evidence introduced upon the hearing of said motion, both in support thereof and in opposition thereto.

All the evidence to show notice or service of motion upon either of the Snyders above mentioned except Teresa Snyder is herein set forth.

And a like motion was filed at the same time by L. Traber; also Drought and W. H. Ryus at the same time made verbal motion for leave to amend in accordance with the facts as set forth in said affidavit; heard at the same time and upon the same evidence.

Said Teresa Snyder had due notice of all the said motions by Drought, Ryus, and Traber and appeared and resisted all motions herein mentioned.

And the court, upon the hearing of said motion, sustained the same so far only as to allow the signature of the officer to be attached to the return in its present condition; to which ruling the said Teresa Snyder duly excepted, and in accordance as said motions complained of do not appear of record said Mrs. Teresa Snyder presents this her bill of exceptions and prays that the same be allowed as such bill of exceptions, which is accordingly — this 5th day of December, 1884.

W. R. WAGSTAFF,
Dist. Judge.

246 "A."

In the District Court of Wyandotte County, Kansas, for the 10th Judicial District of Kansas.

C. F. WELLAND, Plaintiff,
vs.
Jos. E. SNYDER, Defendant. } 1735.

Said defendant having died intestate, said plaintiff hereby notifies the widow and children of said defendant, they being sole heirs of said defendant, that at the first day of the next term of said court, which begins December 4th, 1882, at 10 o'clock a. m., or as soon thereafter as the same can be heard, said plaintiff will apply to said court for an order allowing the sheriff of said county who served the process to amend and perfect according to the facts and truth of the matter the return on the writ of attachment dated May 16th, 1874, issued herein.

L. TRABER,
Attorney for Plaintiff.

STATE OF MISSOURI, } *ss:*
County of Jackson,

William H. Hawkins, being first duly sworn, deposes and says that he made service of the annexed and foregoing notice on Mrs. Teresa Snyder, widow of Jos. E. Snyder, deceased, and also on sons, James D. Snyder and Eugene Snyder, on November 29, 1882, and also on her sons, Fred. and Caspar Snyder, on the first day of December, 1882, by delivering to and leaving with each of them a true and correct copy at Kansas City, Missouri.

WILLIAM K. HAWKINS.

Subscribed and sworn to before me this 20th day of December, 1882.

J. H. EDMONDS,
Notary Public. [L. S.]

"B."

In the District Court of Wyandotte County, Kansas.

C. F. WELLAND, Plaintiff,
vs.
Jos. E. SNYDER, Defendant.

STATE OF KANSAS, } *ss:*
Wyandotte County,

W. H. Ryus, being duly sworn, deposes and says that in the year 1874 R. S. W. Drought was the sheriff of said Wyandotte county, and that deponent was his deputy; that on the 16th day of May, 1874, the writ of attachment on file in the above-entitled cause was received by said sheriff and delivered to this deponent for execution; that on said day at Wyandotte county he executed said writ by

attaching as the property of said Jos. E. Snyder the lands particularly described in the appraisement on file in said action and by declaring on said premises that he attached said property at the suit of C. F. Welland subject to attachment and on the same day made in favor of Henry R. Seegar issued from said court.

That F. W. Drought and S. Bolmer, two householders of said county, *and who* were by this deponent on the same day first duly sworn to make a true inventory and appraisement of all the property so attached, which inventory and appraisement were signed by said householders and are on file in said action; that on the same day this deponent left a true copy of said order of attachment in a conspicuous place on said premises so attached, there being no occupant thereof.

Deponent further says that he wrote out the attachment return on file and filed the same, but by mistake neglected to state therein the fact that he left a copy of the order of attachment in a conspicuous place upon the attached premises, and also neglected to sign the return.

W. H. RYUS.

Subscribed and sworn to before me this 5th day of December, 1882.

SARAH E. CLARK,
Notary Public.

Commission expires May 21, 1884. [L. S.]

Endorsed: C. F. Welland *vs.* Jos. E. Snyder. No. 1735. Bill of exceptions. Filed January 5th, 1884. L. C. Trickey, clerk.

247 In the District Court of Wyandotte County, Kansas.

C. F. WELLAND, Plaintiff,
against
JOSEPH E. SNYDER, Defendant.

And now come Nicholas McAlpine and James M. Mason and, appearing only for the purpose of defending against the amendments sought in this court of the jurisdictional matters raised in motions to amend attachment returns, say:

First. That they are interested in the property claimed to be attached herein, having purchased a three-fourths (¾) interest in said property prior to the filing of such motion to amend attachment returns and since the pretended levy of said attachments, in 1874; that said purchase was made for a valuable consideration, and they are still the owners thereof.

Second. That they purchased a certain other one-sixth (⅙) interest in said property since the action of Tourtelott and others *vs.* Wilkins and others was commenced, in which the certain opinion relied on by the plaintiffs in said last-named action was given, and prior to the time when said amendment of attachment returns was moved for herein, and said purchase was for a valuable considera-

tion of one hundred and forty dollars ($140.00) duly paid to the heirs of S. A. Cobb therefor, and for which a good and sufficient deed was obtained on the 21st day of January, 1882, and interpleaders are the rightful owners of the said interests in said lands and are now in full possession of the same, except twenty-five (25) by fifty-four (54) feet on the southeast corner thereof.

Third. That since the acquiring of one-sixth ($\frac{1}{6}$) interest as aforesaid they, interpleaders, have made lasting and valuable improvements on the same to the amount of one hundred dollars ($100) in value, and prior to the commencement of said Tourtelott suit had made upon said lands improvements in addition thereto to the amount of two hundred dollars ($200) in value, making in all the sum of three hundred ($300) dollars in value, and have not been compensated therefor. All said improvements were made since the commencement of this action.

Fourth. That said interpleaders since the commencement of this action and prior to the motion to amend attachments returns herein purchased in good faith tax liens against the said lands for the sum of two hundred dollars ($200.00), more or less, for which they paid valuable considerations.

Fifth. The facts will not justify said proposed amendment, and the matters and things stated in the said motion and in the affidavit of Wm. H. Ryus in support thereof are wholly untrue.

Sixth. That the equities of the respective parties herein and interpleaders do not justify the proposed amendment; that long prior to the pretended levy of said attachment all the right, title, and interest of the said Joseph E. Snyder in and to said attached property had passed to interpleaders, grantors, and in the consideration of the one-sixth ($\frac{1}{6}$) interest there are new facts and evidence not heretofore passed upon by any court.

Seventh. That in the purchase and payment for said above-mentioned interests interpleaders relied and depended upon the then existing conditions of the record in regard to said attachment matters.

248 Eighth. That more than three years have elapsed since the rendition of the judgement founded on said irregular and void record in said attachment returns, and the plaintiff herein is now barred by the statute of limitations and the limitations prescribed in the statutes of Kansas entitled "Proceedings to reverse, vacate, or modify judgements and orders of the court in which they are rendered" from changing or altering the record therein.

Ninth. That more than five years have elapsed since said void record was made, and other rights intervening the said plaintiff is now barred by the statutes of limitations from changing or altering the same as against said intervening rights held by interpleaders, who are now parties to this proceeding for all the purposes of this motion.

Interpleaders therefore ask leave to defend and to file proof to show the falsity and other matters above pleaded against said amendments.

And further ask that the judgement herein and all proceedings

connected therewith be set aside as void and annulled for want of jurisdiction, there never having been any valid service or return on the writ of attachment herein.

JAMES M. MASON.
N. McALPINE.

STATE OF KANSAS, *Wyandotte County,* } ss:

Above-named James M. Mason and Nicholas McAlpine, being duly sworn, depose and says that the above and foregoing matters and things stated are true.

Sworn to and subscribed before me this 11th day of December, 1882.

My commission expires April 5th, 1883.

JNO. S. COX,
Notary Public. [SEAL.]

Filed Dec. 12th, 1882.

G. W. BETTS, *Clerk.*

249 SEEGAR *against* SNYDER. } 1734.

WELLAND *against* SNYDER. } 1735.

The one-sixth ($\frac{1}{6}$) interest acquired by interpleaders in good faith for a valuable consideration, as shown in the affidavits, and which was acquired since the litigation in the Tourtelott suit commenced, as well as also the other unlitigated interests northerly of said disputed tract, viz., the one hundred and twenty by two hundred and eighty-nine (120 x 289) feet, part of the tract attached in said Seegar and Welland suits, are certainly intervening rights depending on new facts and evidence not passed upon by any court and which the court must take notice of, and we claim that no amendment can now be made to affect them.

In support of this and other points heretofore argued we cite the following authorities:

Under the right of interpleader, since we claim Snyder's interest in the same land both in the litigated and unlitigated interests, we are substituted to all his rights and remedies and can take advantage of any point, wage any rule of law he could have urged had he appeared in person.

But we are even in a better position than he would be, for if the facts which are jurisdictional could be proven amendment could be made against him, but not so as to interpleaders, for if they have acquired *bona fide* intervening interests since the levy no amendment can be made against them, no matter if the other facts would justify it.

The amendment cannot be made; hence we can see why the

plaintiffs are so eager to prevent our being let in to defend. The granting of permission to an officer to amend his return on a writ so as to show what actually occurred in relation to the execution thereof is within the discretion of the court, provided no intervening rights have accrued.

Howard *vs.* Priestly, 58 Miss., 21.

A sheriff's return cannot be so amended as to cause a reversal.

Chicago Planing Mill Co. *vs.* Merchants' Bank, 97 Ills., 294.

The case is analagous to the present one, for as it stands now unamended after a long litigation the title of the plaintiffs in the Tourtelott suit is declared void by the Supreme Court. An amendment of the return would operate as a reversal of that state of things and is therefore in principle within this decision:

"Process issuing from a court is not subject to amendment when third persons have acquired rights and the amendment is in such a matter that their rights would be affected."

Phillips *vs.* Holland, 78 N. C., 31.

"An officer will not be allowed to amend his return to the material detriment of a party who has rested upon the faith thereof. 1878."

Smith *vs.* Martin, 20 Kas.

We have rested on the faith of the present condition of the record and have bought for a consideration stated in the affidavits further interests in the attached property and made permanent improvements. The affidavit shows that we relied on the record as it stood at the time of our several purchases and acquiring of liens.

This Kansas decision and the proof before the court ought to settle the matter—ought to be conclusive.

It cannot be said that the Supreme Court has passed upon the validity of the one-sixth ($\frac{1}{6}$) interest purchased by us later and for a new and undeniable consideration. The court, no matter how biassed it might be, could not say that we paid nothing for
250 this interest, as it did of Tourtelott case. This interest alone gives us the absolute right as of course to question the amendment, leaving all other arguments out of the question. The case presents a question entirely different from one in which we might ask to have a *de facto* return set aside for irregularity or falsity.

This, as it stands, is a *de facto* "nothing," and we claim it ought to remain so, because the facts will justify nothing else.

Even if the plaintiff should get so far as to make this amendment we would then have a right to attack it and impeach it, and, if we can attack a *de facto* return and break it down for fraud or falsity, *a priori* we ought the more to be allowed to prevent a *de facto* nothing from being made into "something" for our injury by fraud and falsehood.

The location of this land at the time it was claimed it was attached could only have been ascertained by this deputy sheriff by inquiry.

A sheriff's return, with respect to service of original process, may be impeached so far as it states facts upon which jurisdiction depends.

Chambers *vs.* King Wrought Iron Bridge Co., Man'f'g, 15 Kas., 270.

On motion to set aside a judgment on the ground that the defendant had never been served with process, held that the sheriff's entry was *prima facie* evidence, but, like other presumptions, it might be rebutted by proof.

Wavant *vs.* Carlston, 53 Ga., 491; S. P. Starkweather *vs.* Morgan, 15 Kas., 374.

No amendment of an officer's return should be permitted when such amendment would destroy or lessen the rights of third persons acquired *bona fide* and without notice by the record or otherwise. Any person interested in a suit may make a motion with reference to his interest whether he is legally or technically a party thereto or not.

Greene *vs.* McMurtrie, 20 Kans., 192.

A void judgment may be vacated and set aside at any time, on motion of the defendant, and this though the judgment has been rendered more than three years before the code of 1868 took effect.

Foreman *vs.* Carter, 9 Kan., 674.

The record upon which a judgement is founded is a part of the judgement within the meaning of this article, but this saving clause cannot apply to motions made to revivify and make good void proceedings, to invigorate a void judgement.

Such modifications of the record can be made only within three years; no proceedings to modify judgements irregularly obtained can be allowed *ad libitum;* no action to correct this record could have been brought except within five (5) years from the time the right of action accrued, which would be when the record was made. Plaintiffs can no more come in by motion than by petition when once barred.

See 6th subsec., 18 Code.

JAMES M. MASON,
Attorney for McAlpine.

A void judgement may be vacated and set aside at any time, on motion of the defendant, without advising the court that the defendant has a valid defense to the action in which the pretended judgement is rendered.

Hanson *v.* Walcott, 19 Kan., 207.

We have the right even to come in and show the proceedings void with no better title than one of mere possession, for a title

plaintiffs are so eager to prevent our being let in to defend. The granting of permission to an officer to amend his return on a writ so as to show what actually occurred in relation to the execution thereof is within the discretion of the court, provided no intervening rights have accrued.

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A sheriff's return cannot be so amended as to cause a reversal.

Chicago Planing Mill Co. *vs.* Merchants' Bank, 97 Ills., 294.

The case is analagous to the present one, for as it stands now unamended after a long litigation the title of the plaintiffs in the Tourtelott suit is declared void by the Supreme Court. An amendment of the return would operate as a reversal of that state of things and is therefore in principle within this decision:

"Process issuing from a court is not subject to amendment when third persons have acquired rights and the amendment is in such a matter that their rights would be affected."

Phillips *vs.* Holland, 78 N. C., 31.

"An officer will not be allowed to amend his return to the material detriment of a party who has rested upon the faith thereof. 1878."

Smith *vs.* Martin, 20 Kas.

We have rested on the faith of the present condition of the record and have bought for a consideration stated in the affidavits further interests in the attached property and made permanent improvements. The affidavit shows that we relied on the record as it stood at the time of our several purchases and acquiring of liens.

This Kansas decision and the proof before the court ought to settle the matter—ought to be conclusive.

It cannot be said that the Supreme Court has passed upon the validity of the one-sixth ($\frac{1}{6}$) interest purchased by us later and for a new and undeniable consideration. The court, no matter how biassed it might be, could not say that we paid nothing for
250 this interest, as it did of Tourtelott case. This interest alone gives us the absolute right as of course to question the amendment, leaving all other arguments out of the question. The case presents a question entirely different from one in which we might ask to have a *de facto* return set aside for irregularity or falsity.

This, as it stands, is a *de facto* "nothing," and we claim it ought to remain so, because the facts will justify nothing else.

Even if the plaintiff should get so far as to make this amendment we would then have a right to attack it and impeach it, and, if we can attack a *de facto* return and break it down for fraud or falsity, *a priori* we ought the more to be allowed to prevent a *de facto* nothing from being made into "something" for our injury by fraud and falsehood.

The location of this land at the time it was claimed it was attached could only have been ascertained by this deputy sheriff by inquiry.

A sheriff's return, with respect to service of original process, may be impeached so far as it states facts upon which jurisdiction depends.

Chambers *vs.* King Wrought Iron Bridge Co., Man'f'g, 15 Kas., 270.

On motion to set aside a judgment on the ground that the defendant had never been served with process, held that the sheriff's entry was *prima facie* evidence, but, like other presumptions, it might be rebutted by proof.

Wavant *vs.* Carlston, 53 Ga., 491; S. P. Starkweather *vs.* Morgan, 15 Kas., 374.

No amendment of an officer's return should be permitted when such amendment would destroy or lessen the rights of third persons acquired *bona fide* and without notice by the record or otherwise. Any person interested in a suit may make a motion with reference to his interest whether he is legally or technically a party thereto or not.

Greene *vs.* McMurtrie, 20 Kans., 192.

A void judgment may be vacated and set aside at any time, on motion of the defendant, and this though the judgment has been rendered more than three years before the code of 1868 took effect.

Foreman *vs.* Carter, 9 Kan., 674.

The record upon which a judgement is founded is a part of the judgement within the meaning of this article, but this saving clause cannot apply to motions made to revivify and make good void proceedings, to invigorate a void judgement.

Such modifications of the record can be made only within three years; no proceedings to modify judgements irregularly obtained can be allowed *ad libitum;* no action to correct this record could have been brought except within five (5) years from the time the right of action accrued, which would be when the record was made. Plaintiffs can no more come in by motion than by petition when once barred.

See 6th subsec., 18 Code.

JAMES M. MASON,
Attorney for McAlpine.

A void judgement may be vacated and set aside at any time, on motion of the defendant, without advising the court that the defendant has a valid defense to the action in which the pretended judgement is rendered.

Hanson *v.* Walcott, 19 Kan., 207.

We have the right even to come in and show the proceedings void with no better title than one of mere possession, for a title

by possession is better than the plaintiff's title, which is good for nothing.

We do not have to answer to the plaintiffs for any wrong doing.

JAMES M. MASON,
Per Self and Attorney for N. McAlpine.

Endorsed: Henry R. Seegar *vs.* Jos. E. Snyder. 1734. C.
251 F. Welland *vs.* Jos. E. Snyder. 1735. Brief filed Dec. 12th, 1883. G. W. Betts, clerk.

I testify that I have served a copy of the within brief and all other briefs left with the court in that matter of amendment of attachment returns in said suits and interpleaders therein upon attorney- of plaintiffs, Pratt, Brumback and Ferrey, on the 11th of December, 1882.

J. M. MASON.

Sworn to and subscribed before me 12th Dec., 1882.

G. W. BETTS, *Clerk.*

252 District Court, Wyandotte County, Kansas.

SEEGAR
v.
SNYDER.

WELLAND
vs.
SNYDER.

Reply Brief.

Counsel for the plaintiffs say that motions are made by plaintiffs, by Traber, and by the sheriff to amend. Motions must be in writing. We know of no motions to amend but those of the plaintiffs, and have supposed that those alone were before the court.

The whole land to be affected by the amendment is conceded to be of the value of five thousand dollars ($5,000). For all this it is claimed Traber paid one thousand and two dollars ($1,002). For about two-thirds (⅔) of it Tourtelott and Alleutt paid Traber one thousand dollars ($1,000).

The papers show that the appraisers in attachment valued the land at one thousand three hundred dollars ($1,300). The appraisers under the execution valued it at one thousand five hundred dollars ($1,500). This was in 1874. No actual cash was paid by Traber, except some costs, and the judgements against Snyder constituted almost the sole consideration for the sheriff's deed to him. The judgement in the Welland case was for three hundred and seventy-five ($375.00) dollars. In a former brief we showed that all remedy on his claim was barred. The judgement in Seegar case was for five hundred and fifteen dollars ($515). That was an action for contribution, in which Seegar set up that he had become surety for

Snyder on a bond to one Hopkins in some legal proceedings in the sum of four hundred dollars ($400); that suit was brought in Missouri against Snyder and himself on the bond, and judgement was rendered against him, Seegar, for $400 and certain costs, which, together with interest on the judgment, he, Seegar, paid some years afterwards. It does not appear from the petition whether any defense was made to the suit, whether Snyder was served with summons or not, and it is not averred that any judgement was rendered against Snyder.

This petition does not show any liability on the part of Snyder to Seegar, except possibly for $400, which was liable to become a joint burden. Interest on the judgement and the costs were a liability of Seegar alone, and the right to contribution arises only where one of several joint obligees pays more than his proportion of a common burden.

In Boardman *v.* Page, 11 N. H., 431, there was a judgement against one of several co-signers of a note, and the judgement and costs being paid it was held that as to the costs of the suit the party paying could not recover any part of them from another co-signer, because they were never a common burden. A surety ought not to resist payment where there is no defense, and if he does so where he has not good reason to believe there is a good defense he has no equity to recover the costs from a co-obligee.

22 Conn., 299.

The petition failing to show any liability to Snyder, except it may be as to $400, the judgment was illegal to the extent of $115.

It results from this that $1,500 worth of land was sold for claims which were legal to the extent of only $400 at most. The errors appear in the petitions in these cases. The judgements were rendered without actual notice and by default. Such a judgement can no more be rendered without a good petition than it can be given over a general demurrer.

14 Cal., 210; 7 Tex., 173; 95 Ill., 328.

253 The record failing to show jurisdiction to render these erroneous judgements, the court is asked to allow the judisdictional facts to be made apparent by amendment. The court is asked to confirm two judgments, one of which ought to be reversed and the other modified, to say the least.

The law never awarded these judgements to the plaintiffs and the court ought not to have given them. An amendment to show jurisdiction in the court to do what the law forbids it to do is indeed a novelty.

The plaintiffs ask the court to show jurisdiction to render judgements to which the law never entitled them. They have even less right, if possible, to ask this than they had to ask for the rendition of the illegal judgements in the first instance. The judgements being illegal, the award of special executions was also illegal, as were the sales and deed. The proposition of the plaintiffs is to show by the record a jurisdiction over the property where the jurisdiction,

which it is claimed existed, was illegally exercised. We utterly deny the power of the court to do this; jurisdiction to commit error ought not to be shown, even if it existed. Had the jurisdiction been rightfully exercised the case would have been different, but it having been illegally exercised the court has no alternative except to refuse to proceed further. Where a jurisdiction has been exercised in violation of law the power of the court is corrective only over it. The law admits no other action. The court ought not to make a record to show the existence of a power wrongfully exercised. The law is content to allow such a record to stand as a nullity, for that is what it ought to be. It ought to be swept away if there is power to do so. It ought never to have been. The judgements, executions, sales, and deed in these cases came into existence in violation of law. All that can now be asked in their behalf is that they be left to stand just as they are for what they are worth. They are now void on the record. All that the court can do by amendment of the returns is to lift them to the level of voidable only. But the power of amendment is not to make a void proceeding appear to be voidable only. That power is to cure and make good and not to merely change from one degree of illegality to another.

Less than one-third of the property would have satisfied all the legal claim shown by the petitions. It is not in furtherance of justice to give $5,000 worth of property for $400, or even for one thousand and two dollars ($1,002). A levy upon $1,300 worth of property, see appraisements, for $400 was excessive and unjust. McAlpine paid more for the property than the whole legal claim of plaintiffs.

Traber, being attorney for the parties, is chargeable with notice of all irregularities, and is not a *bona fide* purchaser.

Freeman on Executions, sec. 340.

Tourtelott is also charged with constructive notice of all defects of record showing his title void or voidable.

5 B. Mon., 337; 41 Illinois, 45.

Within the time fixed by statute, Snyder or his heirs, who are privies to these judgements, could have prosecuted error proceedings to have reversed these judgements. The Welland judgement would have been reversed *in toto*. The Seegar judgement would have been modified by reducing it to $400 on remitting the $115 excess. This would have vacated the title in Traber's hands, for the sale was on both judgement and costs.

Reversed as to costs alone vacates title where one not a stranger is not a purchaser.

Rorer on Judicial Sales, 698, 699.

Tourtelott, being charged with a notice of the void record, would stand in no better position. As to Snyder's, then the amendments asked would cut them off from the power to vacate all these titles resting on these erroneous judgments. This would be very unjust

if they have any rights in the land. I am now arguing
254 with respect to the judgments alone. But no jurisdiction appearing, no one was bound to resort to error proceedings, for the defects were open to collateral attack. Where there is a default, amendment either in pleadings or process are allowed only on condition that defendants be allowed to enter an appearance.

11 Mo., 359, is a case in point where amendment of the petition was asked, and the court said that amendments were in furtherance of justice, and that "if either party required the assistance of the court to enable him to stand *rectus in curei*a that assistance should not have been extended to the one without also being given to the other."

So also in a case in 24 Texas, 302, the court refused permission to amend return on a summons or citation unless leave was given defendant to answer. It said: Until the return of the sheriff upon the citation showed that the defendant below had been properly cited, he was not bound to appear for any purpose. If the amendment be allowed after the term, as in this case, the defendant is cut off from his right of pleading that he has in fact not been properly cited or any other defense. It is true the statute says that any mistake or informality in a return may be corrected by the officer at any time under the direction of the court.

O. and W. Dig., 115.

This may grant the power to permit an amendment of the return after the term at which the judgement was rendered as well as before.

Still the power should be exercised in such a manner as not to deprive the defendant below of the substantial right of pleading any matter of defense after it was made to appear to the court by the amendment of the return that the process had been served.

3 B. L. Com., 410.

And in Houston (Del.), 362, permission to amend a return of summons after judgement was given only on condition that defendants be allowed to appear.

There is no presumption in favor of these judgements. The proceedings were *in rem.* 50 Miss., 795.

Where proceedings are by attachment and there is no appearance, the judgement does not even merge the original cause of action so as to prevent a suit on it. 38 Mich., 393.

It is universally held that where the jurisdiction is over property alone, the judgement is operative against the property only and cannot be made the basis of a suit. These judgments, then, do not evidence any personal claim. They may be very unjust. If they are just it must be shown, for no presumptions are admissible.

18 Kan., 296; 32 Ia., 460; Nash, 1st ed., 421; 31 Ia., 397.

If no presumptions are allowed in favor of the correctness of the judgements, how can the court know that the amendments would be in furtherance of justice?

may have had a perfect defense to the action for a contribution. Until now there has been no day in court for the hearing of the justice and legality of these claims, and when the court is asked to make the record for the first time show jurisdiction and a title it may well in the exercise of its large discretionary and equitable powers in a case like this require the parties to show legal and just causes of action. If they cannot show such the amendments would be in furtherance of injustice instead of justice. It has been held that a judgement of another State is not binding *in personam* nor as an adjudication of a cause of action. 31 Iowa, 397.

The judgement in favor of Hopkins against Seegar was not binding on Snyder, and when it was set up as the foundation of a cause of action in our court the latter had a right to go behind it and show it unfounded, at least if he was not a party. If there was a defense in whole or part and Seegar failed to make it, his claim for contribution would fail, at least in part. But granting the justice of the judgement, Snyder may still have had excellent defense to the contribution suit, which he could not present because of lack of actual notice. If, in fact, there was no good claims against Snyder, it would be gross injustice to deprive his heirs of the land; and without regard to their rights there has been a possession under the bankrupt deed for nearly ten years. Snyder had full notice of the vesting of that title and had the benefit of the purchase-money paid for the bankrupt deed. He never claimed the land afterwards. Is it not right to require one seeking to seize this land as Snyder's and to divest this long possession to show a good claim? Are averments in a petition and a default judgement thereon in a suit where there was no actual notice sufficient to effect this purpose? The mere possession of McAlpine is a good title until some one shows a better. It is an interest that may be sold on execution and in time would ripen into perfect title.

He has paid more than the whole of the legal claim shown in the petitions of the plaintiffs. As to Mr. Traber, his payments were, if we are correctly informed, the satisfaction of these erroneous judgements and not money. As attorney for the plaintiffs he is charged with the full notice of all facts and cannot claim as a *bona fide* purchaser. As to Mr. Tourtelott, he is protected by his warranty. Besides, he is charged with notice of the void record, and is therefore not a *bona fide* purchaser, either. As against him McAlpine can well say that he bought this land when the record showed no title in Tourtelott, and that the latter so bought it with knowledge of facts showing no title in the grantor, and therefore he has no right to be amended into a title so as to receive the land.

Upon the whole it is not made to appear that the amendments are in furtherance of justice or are warranted by law or facts. Tourtelotte holding under a void record is in no better posi-
257 tion than the plaintiffs, when for the first time he asks that jurisdiction over the *res* be shown.

He does not hold under a personal judgement establishing the

justice of a claim. He holds under a judgement which is not evidence even against Snyder's heirs, as he was a non-resident.

See, to this point, 18 Kan., 206; 8 Kan., 133.

And in Banta *vs.* Wood, 32 Iowa, 469, it is said:

"A judgement in attachment, when service of notice is had by publication, binds only the property attached, and cannot be enforced *in personam* upon it. The property of the defendant other than that served upon the attachment cannot be sold, nor does it operate as a lien upon any other property. It is in fact a judgement *in rem*, and is of no effect against other property of the defendant."

Of course, these judgements are not evidence against the defendants in the suit of Tourtelott. Buying, as he did, with notice that there was no jurisdiction over the *res*, can his position be any better than that of the plaintiffs? Can any wrong be done him by requiring him to show the justice of the judgements on which his title rests when he asks to perfect it? He is not a party to these motions, but as they are really made in his interest these observations seem in place.

Counsel very improperly speak of the defendants McAlpine *et al.* as "intruders." They hold possession under a title derived from judicial proceedings in the United States court. True, the supreme court has said that on the former trial the validity of that title was not established, but the whole question is now pending in this court on the new trial granted. Counsel will hardly claim that the validity of the bankrupt title is *res judicata*. Upon the new trial much new evidence will or at least may be adjudged, and if any presumptions are to be indulged they must be in favor of the validity of it. They are in full privity with Snyder. Rorer on Judicial States, page 28, section 54, 1st edition.

To assume that they have no title by virtue of the bankrupt deed would be to decide adversely to them touching a matter now standing for trial in court. The judgement of the court of the United States ordering the land to be sold as Snyder's is certainly entitled to as much force as that of the State court making the same order. Until the amendments are made no one claiming under the last-named proceeding has any sort of standing to question the bankrupt title. This matter cannot be treated as though McAlpine had only a possessory title, for he has a very different one, which neither plaintiffs nor their assignees or grantees are yet in position to attack.

So, also, as to the occupant, with whom we claim the order should have been left, it cannot be said that he represent- an adverse claimant, not the true owner. It does not appear but that Snyder acquiesced in the possession and claim of title made by Cobb and Bartlett, so that the latter were not in fact adverse claimants. The occupant is presumed to be the true owner or to hold under him, and the fact whether Snyder or Bartlett and Cobb had the true title is the main question in the ejectment suit, and which is yet to be tried. It cannot be assumed for the purposes of these motions that

the latter were not the true owners, but rather the contrary, since they had a title of record derived from a high source and which no one disputed who was entitled to do so; but we suppose that a purely adverse claimant in occupation must be served, for the statute is mandatory, and if he has the true title he may interpose by interpleader or by motion to set aside the sales under the executions in attachment—it cannot be said that he is not interested in the notice.

Even if the record here showed, as it does not, that plaintiffs were entitled to the judgements, still, as there was no service except upon the property, the judgements are not *prima facie* evidence of debt.

In 13 Ohio, 218, it is said of such a judgement "that exe-
258 cution cannot issue on such a judgement against the other property or person of the defendant for any implied balance, nor could an action be sustained on it as being *prima facie* evidence of debt."

See Nash, 1st edition, 421, for construction of our attachment law in this regard. Where there is no personal service the legislature cannot provide for a personal judgement. 50 Miss., 468; also Central Law Journal, January 15, 1875, vol. 2, No. 3.

These judgements, then, not being evidence of debt, and the Snyders being brought into court on these motions by personal notice, it is incumbent on plaintiffs to make a case in furtherance of justice to show causes of action aside from the averments in their petition and the judgements based on them. Had there been personal service or even had good petitions been filed, it might have been plausibly claimed that it was for one resisting their motions to show that a defense could have been made to the actions.

In 68 Me., 505, the right to make such showing is expressly recognized where, referring to another case, the court said: "That case, 19? N. H., 109, was an action of debt for an irregular judgement, and the court said they would refuse a necessary amendment of the judgement that was asked for by the plaintiff if the defendant could show that if he had had actual instead of technical notice of the first action he could have defended against it successfully."

But here the defense appears on the record—failure to show cause of action. Nothing more is necessary to defeat the amendments. Before plaintiffs or others can turn out even an intruder they must show good rights in themselves.

NATHAN CREE,
Attorney for Defendants.

WYANDOTTE, *March 20th*, 1883.

We hereby acknowledge service of a copy of the within brief on us the day and date above mentioned.

(Signed) PRATT, BRUMBACK AND FERREY,
JAMES ——, *Attorneys for Plaintiffs.*

259 HENRY R. SEEGAR
vs.
JOSEPH E. SNYDER. } 1734.

C. F. WELLAND
vs.
JOSEPH E. SNYDER. } 1735.

Reply Argument.

1st. Interpleaders have filed no evidence herein but what was filed in time pursuant to order of court, the assertions of plaintiff and Tourtelott, attorney, to the contrary notwithstanding.

2nd. Twenty (20) witnesses empanelled swear positively to the direct fact that the premises claimed to be attached were occupied at the time of the pretended attachments, and there is inferential proof in the depositions of Ryus and Drought admitting it.

3rd. Plaintiffs ask leave to amend, because Ryus and Drought both show by their evidence that they do not know the location of the land.

4th. Because Ryus shows by his evidence that he does not know whether he posted one or more than one copies of attachments and does not know in which one of the cases he posted that notice, and therefore does not know in which case he wants to amend.

5th. Because Ryus says he posted on a stump west of Wood street extended, *where* a score of reliable witnesses testify was in high water, the bed of the Kansas river, and where no stumps existed at that time.

6th. Because Drought testifies to the posting of "notices" and not orders of attachment and states that he did not read them and could not know their contents.

7th. Because the four affi*davits*, the two Taylors, Brown, and Beck, all make statements directly contradictory to the existence of the stumps on the west of Wood street extended, the three former having made statements both ways, and Beck does not in any statement he makes say that there were any west of Wood street, where Ryus claims to have posted.

8th. The question under this motion is not whether McAlpine and Mason have a title to the property, but whether the facts will justify this amendment. Yet if the facts show intervening rights no amendment can be made and the findings of the district court must be thrown out of the question and the rights of the parties must be considered for the purposes of this motion as undetermined and as still pending and cannot be thrown in the scale. "*Quod pendet non est pro quasi sit.*"

As the case now stands the Tourtelott parties have no title. The interpleaders have at least a possessory one, good against all the world except the paramount owner and, in addition, have other intervening equities yet not litigated. Under all this the balance of the presumptions must be in favor of the interpleaders and Snyder parties. See former briefs.

9th. The plaintiffs, who make this motion, assume a good deal

and assume much more than the law and facts warrant. If assumption would win a case they might win it, but if the case is to be tried on law and fact they have no standing in this court.

260 10th. Plaintiffs ask this amendment "in furtherance of justice." They ask to let attaching creditors, one of whom helped to conceal the bankrupt assets (see deposition of Seegar in Tourtelott files. Upon further investigation the additional fact appears that the Seegar judgment was rendered for $115 more than what could have been legally claimed and was erroneous), and another whose claim is barred upon its face, whose claims were obsolete and abandoned debts, to amend these attachment returns when the facts will not justify it, for the benefit of a set of speculators dealing in defunct real-estate claims and who paid their services in badly managing these attachment cases and these abandoned claims for two acres of land—to amend these attachment returns for the benefit of such an outfit.

And all this is in furtherance of justice with a vengeance.

And the title to the same land which cost the purchaser five thousand dollars ($5,000), more or less, is to be divested, in order to allow these gentry to wax rich on the spoils, as did the vikings of old. Can such things be and overcome us like a summer cloud?

It would be an outrage to allow these amendments, in the teeth of the facts, the evidence and the law of this case.

JAMES M. MASON,
Attorney for Interpleaders.

11th. Another reason why plaintiffs claim they ought to amend these attachments returns "in furtherance of justice" and which reason is about as cunning as the other reasons given, is the fact that, the supreme court having made the "taking of the possession of the land the pivotal point of its deductions—see page 11 of opinion—and the former return showing that Ryus, the deputy sheriff, did take possession," Ryus now comes in to amend and in his deposition states "that he did not take possession"—see page 4, 5 of Ryus deposition—and thus Friend Ryus, having knocked the underpinning out from under the supreme court conclusions, asks to be allowed to sign the former return, with the additional allegations that he left a copy, &c., which, by his own testimony, he proves to be a false return, and which if amended so as to meet the facts in regard to possession he would have no right to stand upon any order of the supreme court to amend, since the reason of the order failing the order itself fails. "*Ratio est legis anima, mutata, legis ratione miltater et lex.*"

There are other reasons quite as cogent as these which plaintiffs might urge in favor of the amendment, but we think those are fully sufficient to get the amendment through, since the supreme court has seen fit to reverse and correct its former opinion.

JAMES M. MASON,
Attorney for Interpleaders.

We acknowledge service of a copy of the within and foregoing brief and argument on us this 20th day of March, 1883.

PRATT, BRUMBACK AND FERREY,
Attorneys for Plaintiffs Tourtelott and Allcutt, Parties.

[Endorsed:] Argument. Reply. Filed March 21st, 1883. L. C. Trickey, clerk.

261 We hereby acknowledge service of a copy of the within brief and argument on us this 20th day of February, 1883.

(Signed) PRATT, BRUMBACK AND FERREY.
Attorneys for Tourtelott and Allcutt, Parties and Plaintiffs.

District Court, Wyandotte County.

SEEGAR
vs.
SNYDER.

WELLAND
vs.
SNYDER.

1. Motions are filed in these cases to amend the returns so as to cut off the defense of defendants in the suit of Tourtelott. The court is asked to allow new returns to be made, and to then affirm a judgment in another case in which they were offered in evidence. It is a startling assertion to say that, after final judgment, the evidence can be changed with a view to determine what judgment shall be given. The district court has no such power, and it cannot be conferred upon it by mandate from the supreme court, for that court cannot give it a jurisdiction which must come from the law.

2. The supreme court has merely said that returns of service may be amended when the facts warrant it. They have not said that the returns in these particular cases can be amended. They have no power to say that except upon review of decisions of this court allowing or refusing amendments. They have exceeded their jurisdiction in ordering this court to exercise its original power, but they have not *went* so far as to restrict the court in the exercise of its original jurisdiction. The court must act, but no question is foreclosed except the matter of law or general rule that defects in returns of service are amenable. It is still for this court to say whether or not these causes come within the rule, for the law forbids amendment of such defects in some cases, and the general power is subject to many limitations.

3. All the decisions say that the facts must warrant the amendments, and full and satisfactory proof of the truth of the proposed amendments must be made. 10 N. H., 291; 57 Ill., 226.

The cases also all say that intervening rights cannot be cut off by amendments. They all say, too, that the allowance or refusal of them is discretionary, and that error lies only when the discretion is abused or orders are made allowing them when there is no power

to do so or refusing them for that reason instead of exercising the discretion vested in the court. It is also settled that just terms may be imposed. Many cases say that an ex-officer cannot amend returns; that there must be some record to amend by, and that parol is not admissible.

4. Mr. Ryus admits to saying that he posted copy of order in one case only, and in his deposition he refuses to swear to posting two copies, but thinks he did from his usual course of business. If he served but one, he does not know in which case. All this is conjecture and not proof beyond one copy. Fred. Drought says that he did not know anything about the matter when he talked with him, nor could we refresh his memory. The other side were more successful in that respect. He also says that even if he had recollected about the service he would have concealed the facts on account of bias against McAlpine's attorneys. The evidence of a man so narrow-minded and malicious ought not to be believed without corroboration. His sudden illumination is suspicious, and to take the property from the defendants on his word would be worse than folly; it would be a crime. He does not speak of copies of the orders of attachment, but of notices only.

262 5. The return in Welland's case ought not to be amended because the claim is barred on its face. It cannot be presumed that on the trial facts removing the bar were proved, for, none such being plead, no evidence of them was admissible. No personal service being made, Snyder had no chance to make the objection below, and he could therefore make it on error from the default judgement. 29 Ind., 522.

Or he could move to set aside the judgement. On the petition in that case the court ought to have dissolved the attachment and given judgement for defendant. It was not bound to give an erroneous judgement and such act, if done consciously, was deeply criminal. The supreme court has said that the record as it stands shows no service. If the return is amended it will still appear that the court had no right to render judgement for Welland. As it now stands it appears that an erroneous judgement was given where there was no service. A return showing service ought not to be allowed now, for it would not cure the error, and it is the duty of the court to stop short and not proceed further in such a case. Rather than to act further in the erroneous case it ought to still set aside the judgement, dismiss the action, and thus dissolve the attachment. The record showing no return, there is no jurisdiction, and the existing judgement is void. All courts may, without motion even, set aside such judgements. That without a return no judgement can be rendered, not even for defendant's costs, see 2 R. I., 450.

It appears to us to offend common sense to say that an amendment of the record to show service ought to be allowed where it would still appear that the judgement was illegal. Drake says, "That if the sheriff do not make a return at all the attachment is considered to be dissolved." Sec. 424.

Had he originally made a return of service it would have still

been the duty of the court to have given judgement for Snyder, and thus have set aside the attachment. This must be so unless it was the duty of the court to give a judgement for the plaintiff when his petition did not show a cause of action and was not sufficient to support a judgement

An amendment of the return would still leave the judgement one which ought not to be on the record. A petition not demurrable and good service are both essential to support a judgement by default. If both are defective, both or neither ought to be amended. If there was no service in fact, would it not be trifling and vain to ask the court to allow an amendment of the petition? And if there is no petition to support the judgement, is it not equally vain and trifling to amend the return? This is a proceeding purely *in rem.* 50 Miss., 795.

In such cases a petition good upon demurrer is essential to jurisdiction. Rorer on Judicial Sales, sec. 71, 72.

We have argued upon the supposition that the judgement is erroneous only, but are inclined to think it void. The petition and affidavit are both part of the record and must be considered together, and even where no reference is made in the affidavit to the petition the cause of action set out in the latter is deemed to be the one referred to in the former. Drake, sec. 96.

The code requires the affidavit to show fully the cause sued on, and the amount the plaintiff believes he ought to recover must be stated. Code Sen., 191.

An affidavit without the last requisite would give no power to issue the writ, and, if it appears from the petition that the plaintiff ought not to recover anything, is it not just as bad as a total omission to state what sum ought to be recovered? Suppose the petition shows payment, release, or other matter making it appear that there is no recoverable debt? Is it, then, of any avail for the plaintiff to swear that he is entitled to recover a given amount?

263 Swearing that a claim is due is not a substitute for swearing that it is just. 33 Ohio State, 268.

Nor that he "thinks" he ought to recover equivalent to "believes" he ought. 7 West Virginia, 380.

Where the affidavit must state that the debt is due the writ is void if it is not done. 43 Mich., 461.

And so also where it must state what plaintiff is to recover over and above all set-off and counter-claim. 21 Hun. N. Y., 216; 29 How. Pr., 68.

These cases say that such provision is to prevent the plaintiff from making an oppressive use of the writ when he knows that the defendant has a set-off or counter-claim. The provision as to stating the amount that plaintiff ought to recover is for the purpose of making him swear that he asks the writ to secure a sum for which he is entitled to judgment and an order of sale of the attached property. If he cannot get judgment and an order of sale it is a gross wrong for him to seize the property of the defendant, and if his petition contradicts his affidavit and shows it to be not true it is

the same as if not made. An affidavit must show a cause of action existing. 39 How. Pr., 385.

If the writ was void of course no amendment of the service ought to be allowed; but however this may be any objection of record can be urged against the amendment that would have been proper to urge against rendering the judgment on the ground of illegality. A judgment which ought never to have been rendered, aside from no return of service, ought not to be aided by amendment of the latter alone, even if it could be done. It is the duty of the courts to arrest erroneous proceedings, and not to persist in them, and the plaintiff is without standing in court unless both petition and return can be amended. Of course the judgment can only be made good by amending the petition so as to show a cause of action. A return of service is not amendable unless the whole return as amended shows good service. 2 Allen (Mass.), 340.

On the same principle amendment to make good the judgment in this case ought not to be allowed unless the amendments are sufficiently broad to make the judgment good and legal. A party must ask such amendments as will perfect the proceedings in whole and not in part only. He is without any standing in court, except to make good the proceedings, if they are bad, and, if admitted, he must make them up wholly good to get relief.

It is well settled that it must appear on the face of the proceedings that the attachment is for a cause of action for which an attachment will lie, otherwise the writ is void. 24 O. S., 480; 55 Me., 450.

But if from the whole record no cause of action at all is stated how much better can it be? In such case the attachment can be dissolved on the face of the papers, and must be treated as void until amended if it be amendable.

But, however all this may be, it is beyond dispute that the judgement in this case cannot be made good by amendment of the return unless defects at the foundation also be amended. In other words, amendments to make good a judgement must embrace all the defects necessary to be amended to perfect it or none will be allowed.

6. The top of a stump is not a conspicuous place on the premises. Speaking of the necessity of the return showing this, the United States circuit court has said:

"Neither does it appear from the return that the copy left upon the premises was posted in a conspicuous place. As to the east half of lots 1 and 2 the return states that the copy was posted on the building thereon, but whether on the front or back or the upper or lower story, or whether either was a 'conspicuous place' on the premises, does not appear, while as to block 15 it simply
264 states that a copy was posted 'on said block.'" 5 Sawyer, 485.

In that case a deed resting on such service was held void in ejectment. In this case the affidavit is attached to the petition, and in stating the nature of the claim affiant says: "That the nature of

plaintiff's claim *id* for money due him on four promissory notes, copies of which are fully set out in the petition above."

N. CREE,
Of Counsel for Defendants.

Endorsed: Seegar *v.* Snyder. 1734. Welland *v.* Snyder. 1735. 47. Filed February 20th, 1883. L. C. Trickey, clerk. Brief of N. Cree.

265 District Court of Wyandotte County, Kansas.

HENRY R. SEEGAR
vs. } 1734.
JOSEPH E. SNYDER.

C. F. WELLAND
vs. } 1735.
JOSEPH E. SNYDER.

Brief and Argument on Motion to Amend Attachment Returns by Interpleaders, McAlpine and Mason.

The case was an action in ejectment. The only cause of action set up by the plaintiffs grew out of a judicial sale in an attachment case without personal service and the judgement was recovered without proof of service of the attachment. This case was carried to the supreme court by the defendants.

The supreme court decided that the admission of the judgement in evidence was erroneous and that the judgement in this case was improperly rendered. The necessary legal result was, therefore, the reversal of *of* the judgement in this case.

But the court proceeded to say that the lack of a return by the officer in the old case was amendable and if it can be amendable the judgement in this case ought not to be reversed, and they made the following order:

"It is, perhaps, a novel way of disposing of this case, but we think that substantial justice requires the order which will be made, which is that the case be remanded to the district court with the instruction that if within such reasonable time as the district court or judge shall provide the sheriff's return on the attachment order shall be amended in conformity to the views expressed by this court in this opinion the judgement shall be affirmed.

"On the other hand, if said amendment cannot be obtained the judgement will be reversed and the case remanded for new trial."

The mandate also provides (as I am informed) that in case the amendment is made the judgement against the defendant shall be affirmed with costs.

Upon this state of facts I have to say that when the supreme court says "if the return can now be amended" it means it can be properly legally amended, and that necessarily means if the service of the attachments is not controverted by the parties in this case. The object is to avoid further needless litigation. The order thus

construed would do no injustice, except as to the costs which are provided for in the mandate but not in the order.

I assume that to be the true meaning of that order and shall proceed to give my reasons for so construing it:

1. There is no law in this State nor, as I believe, in any other State that authorizes the supreme court when a fatal error has been committed by the prevailing party and judgement reversed by means of such error to remand the case for the purpose of allowing the party who committed the error to correct it and thereby maintain his judgement without allowing the other party also a new trial so that he may introduce evidence on his side and try the cause *de novo*.

When there is no case made out by the plaintiff the defendant is under no necessity to introduce evidence and the supreme court has no right to assume that he has none. No such new trial was ever known and the supreme court should not lightly be charged with inventing one.

266 2. But this order does not provide for any trial upon any question upon legal evidence, but merely at most, as plaintiffs claim, for a motion in another cause tried about seven (7) years ago in which these defendants were not parties, and this motion is relied upon by our adversaries to determine the title to a large amount of property. The supreme court never intended any such unjust result.

3. The supreme court has no authority to remand a case by order for the purpose of allowing the party who is in error to put in evidence to sustain his case without allowing a new trial to both parties. The authority of the supreme court upon petition in error is purely statutory and is granted by section 540 of the Code, and the only power there given over judgments is to reverse, vacate, or modify. It has done neither of these things, but, as our adversaries say, has sent the matter to you to have some evidence made for one of the parties to save his judgement.

I say it was sent back to see if the actual service of the attachment was controverted and if it was admitted to save the expense of further litigation by entering judgement. This, of course, was outside the power of the court, but intended to save expense, merely.

4. The ex-sheriff has no power to amend his return to that attachment or to make return of service seven years after he has been out of office, and the process, if he ever had one, has been returned into court and a void judgement rendered in the cause. He is no longer under official obligations as a sheriff to make return truly nor has he any surety to guarantee the truth of his return. The bond given by the sheriff and sureties by its terms guarantees the conduct of the sheriff during his continuance in office.

See Compiled Statutes of 1879, page 294, sec. 100.

It is true that section 109 of the same statute provides that the sheriff after the expiration of his term of office may execute and return writs, &c., remaining in his hands which he has commenced to execute.

But in this case there was nothing in the sheriff's hands to be executed. When he left the office the writ was in the hands of the court and a void judgement already rendered upon it.

Under such circumstances a return by the ex-sheriff would not be sanctioned by official oath or obligation and not guaranteed by any surety whatever. It is clear therefore that such ex-sheriff cannot legally make such return, either with or without your honor's approval, and therefore the supreme court could not intend that he should do it, as whatever cannot be legally done in consideration of law cannot be done.

That an ex-sheriff when out of office cannot make or amend a return unless expressly authorized by statute, see 22nd Georgia, 476; Cole *vs.* Duggin, 41 Miss., 557; Spruil *vs.* Bateman, 4 Dev. & B. N. C.

5. This is a case in ejectment on trial here (upon the theories of the plaintiffs) upon the affidavits and without a jury or any possibility of getting one. If the decision of your honor is in favor of the parties plaintiffs, it is a final judgement for the land in question, it being based upon this old judgement that stood on nothing and makes it effectual, though it never before had the breath of life in its fraudulent nostrils. It is a trial of an ejectment case, and a trial upon no legal evidence for such a purpose, but upon affidavits.

That it is a trial cannot be doubted. See Code, sec. 265.

That in every such case a man must have his right to trial by jury, see Constitution of the State, Bill of Rights, section 5.

All know that an ejectment case was always triable by jury. Also Code of Civil Procedure, section 266.

267 It cannot be denied that the proceeding to determine whether the plaintiff is entitled to the possession of land is a trial. See section 265, Code.

The issue that plaintiffs wish to determine is whether the attachment was served, and that is now the sole issue in this ejectment case, and, of course, it belongs to a jury to determine. The supreme court certainly did not intend to take from the defendants a right to a jury trial on such a question.

6. But the supreme court has not asked your court to ascertain the question of the service of that attachment, but has merely asked the court or judge to fix a time within which it may be done. Now, it is quite sure, I think, that the court did not intend that a judge at chambers should try an ejectment case or any issue in it at chambers, and therefore they did not authorize any trial of such question.

But it may be said by the plaintiffs that the court intended to say that the ex-sheriff might come around and make a return to that ancient writ whenever it suited him within the time that should be fixed by the court or judge, but that is preposterous. I do not think this court or judge would allow any one, under pretence that he had once been sheriff, to come in and interpolate anything in the records of the court, and it would make no difference if the

judges of the supreme court direct it, as they have no authority not given them by statute, and no statute gives them such authority.

I believe, therefore, that they have not undertaken to do so, and if they have it makes no difference in this case, because, having by statute no authority except to affirm, reverse, vacate, or modify, they have no authority to tell any one to put a patch on the old judgement.

It may be that the supreme court supposed that the sheriff who is assumed to have had that attachment is still in office, and in such case, as between the parties to that suit, probably that amendment might be made.

But such is not the case, and if it were the amendment could not be made to affect the rights of subsequent purchasers for value, who purchased with full notice that the judgement was void by the inspection of the record, which showed upon its face that the judgement was rendered without personal service and without service of the attachment. The record would have been notice of a judgement if it had appeared upon its face to be upon proper service; but as it appeared to be without service the defendants were thereby notified that they might properly buy the property as they did. They cannot by making a return now defeat the subsequent purchaser.

See Ohio Life Insurance and Trust Company *et al. vs.* Urban Insurance Company *et al.*, 13 Ohio, 220, 227.
Howard *vs.* Priestly, 58 Miss., 21.
Smith *vs.* Martin, 20 Kas., 572.
Wilson *vs.* Arnold, 5 Michigan, 98.

The plaintiff- present to the court what seems to me a very extraordinary string of propositions:

1st. That the plaintiff below, having committed error on the trial of the cause and recovered judgement by such error, may by new testimony sustain this erroneous judgement, and as a reward for committing the error shall recover costs in the supreme court.

And the defendants below, for committing no error, but having error committed against them over their exceptions, shall pay the costs of the supreme court.

2nd. That the defendants shall have no new trial and no right to introduce evidence in avoidance, because, as I suppose, the plaintiffs by their industry in committing error had produced the
268 subsequent litigation, and others had no interest in it except to respond to such judgement as might be now rendered therein.

3rd. That a man once a sheriff is always a sheriff for the purpose of making evidence on the record in favor of the plaintiff.

4th. That a defendant in an ejectment case has no absolute right to a jury trial.

None of these propositions, we believe, has the supreme court intended to affirm by its "novel" order.

But if you look at the evidence taken by affidavit and deposition, I think that it fails to prove any service, but I am not familiar enough with the evidence taken to comment upon it, and therefore leave it to others better informed on the subject, but without reference to the evidence I think it is clear from the considerations above alluded to that the proper disposition of the case is to set it down for a new trial, in which both parties can be heard.

If the court finds against us, I do not know of any decision that the court can place upon the record. It lacks the power, as it seems to me, to render a judgement of the supreme court, and I know of no authority by which it can decide to affirm and remand the case to the supreme court to make an entry giving effect to the decision of this court.

All of which is respectfully submitted.

NELSON COBB,
Of Counsel for Defendants.

WYANDOTTE, *Feb.* 10, 1883.

Hon. judges of supreme court, Kansas:

The defendants in error take the ground in second paragraph of their brief, page 3, that the two deeds, viz., the carte-blanche deed, dated 1864, and bankrupt deed to Judd, convey the same lands.

See James to Snyder, 198, 199, Record; see bankrupt deed, 356, 363, Record.

There can, then, be no doubt upon an investigation of the description and referring to the plats, 676, 683, and evidence of experts, 383–407, but that this bankrupt deed, and therefore the deed of date 1864, conveys the land in controversy. This ends the case of itself, and under any view the trial court must be reversed, since upon the statement of defendants in error "the proofs show that the river was at the same place when both deeds took effect." See also deed back to James, 210–211, 1869, which defendants in error say was set aside by an election of the assignee in bankruptcy and those holding under him because it was an attempt to convey away the same lands, assets obtained under the carte-blanche deed.

The defendants below could have introduced evidence that the lands claimed to be attached were actually occupied by the tenants of defendants' grantors at the time of the alleged service and much other evidence, and would have done so if they had not been relying upon the void attachment returns.

If this had been done it would have appeared that the attachment was void for the reason that the service alleged was by posting in a conspicuous place on the premises when service should have been made by leaving a copy with such occupant; besides, much other evidence would have been presented in the case generally.

Under these views it would be glaring error not to reverse the trial court.

Respectfully, &c., J. M. MASON.

269 Received a copy of the foregoing brief and argument of Nelson Cobb, and this sheet served on us this day *of* 13th of February, 1883.

(Signed) PRATT, BRUMBACK AND FERREY,
Counsel for Plaintiffs Below, Defendants in Error, in Case of Geo. W. Tourtelott et al. vs. Chas. Wilkins et al.

Nos. 1734 and 1735. Filed February 26th, 1883. L. C. Trickey, clerk, by M. J. Trickey, deputy.

270 In the matter of the amendment of the attachment returns in the case- of Henry R. Seegar *vs.* Joseph E. Snyder and C. F. Welland *vs.* Joseph E. Snyder, Nos. 1734 and 1735 on the docket of the district court of Wyandotte county, Kansas.

Application for amendment in such suits for the purpose of affecting the title to the defendants in the suit of—

GEORGE W. TOURTELOTT and GEORGE P. ALLCUTT, Plaintiffs, *against* CHARLES WILKINS, WILLIAM WILLIS, JOHN S. SPERING, Nicholas McAlpine and James M. Mason, Defendants. } Brief "A."

In the District Court of the Tenth Judicial District of Kansas for Wyandotte County Sitting. No. 2547.

The defendants in above-entitled cause ask leave to appear and defend in opposition to the motions filed by plaintiffs December 4th, 1882, for amendment of attachment returns in cases of Henry R. Seegar and C. F. Welland against Joseph E. Snyder, Nos. 1734 and 1735 on the docket of said court.

The plaintiffs claim that parties defendant in suit No. 2547 have no right to defend against said motion—

1st. Because they are not parties to the original suits, Nos. 1734 and 1735.

2nd. Because by the opinion of the supreme court in case No. 2547 said parties defendant have no interest in the attached property in suits Nos. 1734 and 1735.

We think the position is untenable. The law as established by the current of decisions is that after the attachment has gone out of the hands of the sheriff or under sheriff, after the term of office of such officer has expired, after other rights have intervened, and after the lapse of the period as long as the one in this case, eight years—

That permission to amend should only be granted in furtherance of justice and the exercise of an enlightened jurisdiction.

This discretion can never be properly exercised without a complete knowledge of all the facts.

This knowledge can only be obtained by sommonsing all the

parties in interest before the court and considering all the material and competent evidence they may be able to adduce.

Hence permission to amend a return should not be considered a matter of course or granted without *a* first notifying the adverse party and giving him an opportunity to show cause against the amendment.

Now, the parties defendant in the Tourtelott case are not directly defendant- in the attachment cases of Seegar and Welland, and under which plaintiffs claim, but they claim all the right, title, and interest of said Snyder in and to the lands in dispute by a title that antedates that of the plaintiffs.

The plaintiffs in the Seegar and Welland suits are represented by the plaintiffs in the Tourtelott suit.

The defendant, in the Seegar and Welland suits are represented by defendants in the Tourtelott suit.

The plaintiffs in both suits are privey to each other; so likewise are the defendants.

But the plaintiffs say that the defendants in the Tourtelott
271 case are precluded by the opinion of the supreme court. A careful reading of the opinion will not bear out the assertion. By that opinion the plaintiffs have been declared to have no title. Their pretended title is declared to be void for want of jurisdiction in the attachment suits. Such title must remain void unless certain amendments can be made. The plaintiffs cannot amend unless the facts justify it. The plaintiffs have no right to question the title of the defendants until such amendments are made. The court below erred in its decision or the plaintiffs were wrong in their suit *ab initio*. All their proceedings are void dating from 1874.

Meanwhile defendants have obtained certain intervening rights in the property in dispute. If the amendments cannot be obtained, then the defendants by the order of the court are granted a new trial, but really the suit is ended in favor of the defendants. On the other hand, if the facts will justify such an amendment and the plaintiffs can obtain the same, then the decision of the trial court will be affirmed, with costs.

Now, this is the situation. Under these circumstances can it be said that the defendants in the Tourtelott suit have no interests to protect in opposing this amendment?

That such amendment must be made *ex parte* as to them because the supreme court has given an opinion contingent upon certain proceedings for amendment? That the said defendants will or will not have an interest in the property?

Now, the title to the defendants is more or less involved in this issue made upon the motion to amend. There can be no question about that. The plaintiffs know this to be so and seek this amendment for the sole purpose of defeating the defendants' title. Can it be said that the defendants have no interest to oppose a proceeding which will defeat them in a pending suit involving valuable land interests? Supposing the opinion of the supreme court to be correct:

The defendants are in full possession, and if they have nothing

else they have a possessory title and have a right to defend that possessory title against all who do not show a better one. Whether plaintiffs can show a better title depends upon a contingency, upon a question.

Defendants are interested in that question, and in its adjustment have a right to defend their possessory title.

But the able gentlemen say that cannot be so, because the supreme court has said that the defendants had no title.

But is the opinion of the supreme court a finality, even if the con-gency happens upon which the amendment can be made? Not so; a motion is pending on behalf of plaintiffs in error, defendants below, for a rehearing.

The supreme court may reverse its own opinion and order and decide that its "novel" way of disposing of a case has no precedent and no law to support it; but if it shall not the case is one which can be carried higher and to the Supreme Court of the United States, as there is a construction of and a title arising under an act of Congress involved—that is, the question whether the land in dispute was or was not assets of the bankrupt Snyder, under whom the defendants claim—and if the supreme court upholds the jurisdiction of the district court acting as a bankrupt court acting in these bankrupt proceedings, then the plaintiffs have no title and the defendants the possession, the title, and all the equities.

The suit must then, for all the purposes of this motion, be considered as still pending; it is by no means concluded; there is nothing conclusive about the opinion of the supreme court.

Even the supreme court has not yet reversed or affirmed
272 the court below. It has simply remanded for further proceedings and the case is still actually pending in the district court; and when the district court reaches a conclusion it will still be pending on a motion for rehearing; and when that is reached, if it should affirm the court below, the *court* would still be pending in the Supreme Court of the United States.

The plaintiffs jump at conclusions if they suppose the present action of the supreme court is conclusive of our rights.

The manifest injustice and want of equity in the opinion of the supreme court of what it intends to be done if the amendments are made in conformity with the views expressed by the court stares us in the face.

Here is a proceeding dating from 1874 which the court declares is all wrong from the start, all void—a void record *ab initio*—a proceeding commenced, so far as the record shows, without jurisdiction, upon the faith of the record void as it was. The defendants have paid out money to purchase property, become occupying tenants, and made valuable improvements, purchased taxes, and carried on with plaintiffs a long and expensive litigation, and now, under this opinion, if the sound discretion of the court below will allow it, the defendants are to be ejected from the property, although their title antedates that of plaintiffs many years.

They are to lose all their valuable improvements, to which they

are entitled under the occupying claimant's law. Secs. 601, 602, Compiled Laws.

The plaintiffs are to be let into the possession of the property without first paying the taxes purchased in good faith under the tax laws Secs. 142, taxation, Compiled Laws.

And, above all, by the terms of the mandate, are to be compelled to pay all the costs of the suit and all these expenses accruing while plaintiffs' record was void.

What kind of a sound discretion would this be that would impose upon the defendants all these burdens without giving the defendants a right to be heard on all these questions which so nearly concern their vital interests?

Can it be said that the defendants have no interest in a suit which is still pending and may be pending for years yet?

But, says the honorable gentlemen, "It would not make any difference with these defendants about the consideration of their motion for a rehearing, even if the amendments should be allowed, that we could still go on as before." That is partly true and partly not true. We could go on, it is true, but with diminished chances of success. With a diminished record every one knows it is hard to undo what is done amiss; that the upper court would not look upon a thing done upon the same light that it would upon things contemplated. We have a right to meet these parties upon the threshold of our rights and prevent a wrong being done, and our right is not confined to the remedy or in obviating the consequences of a wrong.

We have a right to meet these parties now precisely as we would have had a right to meet them if this amendment had been asked in the court below when these returns and the attachment deeds founded upon them were offered in evidence.

Does any one doubt but that we then would have had a right to oppose such amendment, and show that the real facts would not justify such amendment as we could show and any other facts in the case?

To take contrary ground would be to say that the *ex parte* return of a sheriff is conclusive and cannot be contested; would in effect be dividing the issues in this case against us previous to trial.

The case of Buckingham *vs.* Osborn says, however, "that the return of an officer that he had left a copy of the attachment writ, &c., at the defendant's place of residence is open to contradiction. 44 Conn., 133.

The current of authorities is that such return can be disputed.

273 In the case of Claymore *vs.* Williams, 77 Ills., 618, it is said:

"If the levy of the attachment on land or other property is not signed by the proper officer it amounts to no levy, and it is erroneous to award a special execution for its sale."

Prior to the actual amendment in all respects the same must be treated as void, and, although in Kansas the right to amend exists, it must be on terms as to costs and all intervening equities must be considered.

The court in this case ought to exercise and no jurisdiction can

prevent it from exercising its original jurisdiction in this matter precisely as it would have exercised it if this question had or shall hereafter come up under a new trial in the court below; nor is it within the province of the supreme court to infringe upon the sound discretion of a court of original jurisdiction, and it is not clear that it has undertaken to do it. It would be *coram non judice* and, therefore, void.

But there are other grounds upon which we can ask the court to consider that we have such an interest in the pending motion as will allow us to appear as parties to oppose it.

It is not a good argument, used by Mr. Pratt, "that if they, the plaintiffs, have no right to this land that the heirs of Snyder could recover the lands in ejectment from the defendants."

The opinion of the supreme court would not be of any force in such a trial, as it would not be an opinion in that case. The rights of the defendants are not in any event concluded by it as against Snyder's heirs.

That question would depend entirely upon the evidence offered in such trial. So far as the heirs of Snyder are concerned we have a standing right to a new trial. We have not had our day in court as to them.

Neither is the opinion in the Tourtelotte case an opinion binding in the cases of Seegar and Welland, as the parties are not the same, nor is it binding on the court in the consideration of this motion on the question of amendment, because that motion is made in the cases of Seegar and Welland.

The plaintiffs are not even at liberty to say that the supreme court has instructed such an amendment, if the facts would justify it, for no such instructions are given in either the case of Seegar or Welland. The matter was not before the supreme court by any jurisdiction it had of the cases of Seegar and Welland.

No petition in error is pending before such court in such cases. It is alone in the Tourtelott case as a question of evidence that such instructions are suggested, and that by virtue of the jurisdiction it acquired through the petition in error in that case.

If the doctrine of the gentlemen is true, that we have no interest in opposing this amendment, it is because we will not be concluded by it and because the returns will still remain void as to us even after the cases of Seegar and Welland, and the only way the court could grant the right to amend in such cases would be with a saving of the rights of the defendants in the Tourtelott suit.

But the object in asking this amendment in the cases of Seegar and Welland is with a view to use them as evidence in the Tourtelott case.

They ask to alter a record not for the purpose of the action in which this amendment is asked, but for the purpose of affecting the defendants in the Tourtelott suit. The motion might have more appropriately *have* been made in the Tourtelott case. It should have been made in that case if it was intended to rely on the instructions of the supreme court as a support to such a proceeding.

We are constrained, therefore, to believe that such an amendment

will affect us injuriously, and so far as it will do so in creating new instruments of evidence against us we have the right to de-
274 fend against it. The amendment cannot be made without affecting both the Seegar and Welland cases and the Tourtelott suit.

If the record is amended for one purpose it will be for all, and we are certainly interested in opposing it at least so far as it will have any reflex action on the case in which we are parties, and it is only on the theory that it will affect us that this amendment is sought. Therefore it is proper that we should be heard; but in addition to the supposed rights of Snyder's heirs and the equities of the defendants litigant in the Tourtelott suit the same persons, McAlpine and Mason, have since the commencement of this action purchased other rights and claims in said property which have not been litigated in said suit and upon which no court has yet passed in any form.

I refer to the fact that since the said suit was commenced McAlpine has, for a valuable consideration, bought out two of the heirs of S. A. Cobb, and the interest of another of said heirs now rests in Mrs. Sophia A. Cobb by descent. Here, then, is a quarter interest, partly in defendants and partly in Mrs. Sophia A. Cobb, which has never been passed upon and in which there is no opinion. Besides this tract, 289 by 180 feet, actually in litigation in this suit there is north of this another tract, one hundred and twenty (120) feet by two hundred and eighty-nine (289) feet, liable to future litigation upon the same questions as are involved in this Tourtelott suit.

The amendment of these returns would affect all of these new and unlitigated interests, because it would be an amendment of a record which, when amended, might be used against all of them.

The court has full and absolute power over the matter of allowing the amendments. The supreme court has merely decided that the amendments may be made, and that notwithstanding that they may prejudice the defendants in the Tourtelott case. This discretionary power of this court, however, to allow or refuse the amendments is not cut off by anything said by the supreme court.

That court could not do that nor has it attempted it, for it had not knowledge of the facts as they exist now and — the light of which this court must exercise its discretion.

However this may be, the court expressly says, near the close of the opinion, that amendments are only to be made provided the truth of the case warrants them. We call careful attention to this, for it directly permits inquiry as to all of the facts touching the return of service to this court.

The supreme court have not said the amendments must be made nor has it said upon what notice or evidence they may be made or upon what terms. Such an order as that would be a gross usurpation of the jurisdiction of this court over its own record and would be a direction as to how it should act in a proceeding thereafter to be had in this court touching a matter never received by the supreme court.

This court is now called upon to exercise its original, inherent

power respecting amendments. We claim that its discretion is not concluded, but at all events this court must by every term of the decision determine all matters of fact as to the truth and of the proposed amendments. This court is not directed to act on any particular evidence nor to hear or determine anything but the application according to the truth of the matter and as sound discretion may dictate. A discretion is in this court subject to review in case of abuse, and nothing but most explicit language should be considered as cutting it off; it cannot in advance be cut off without usurpation.

Let this court propound this question to the other side, "Would it be error for me to hear defendants in the Tourtelott case on those motions? Am I destitute of the power to do so? Would
275 that be an abuse of discretion, even?"

These questions cover the point made by the opposite side. The defendants, then, on other grounds than those involved in the Tourtelott suit, are interested in opposing this motion to amend the attachment returns.

It looks a little far-fetched and like straining a point for the supreme court to act upon its own motion in suggesting these amendments when no suggestion or amendment had been made in the court below.

It cannot be doubted that the true equities of the case would have been more subserved if the supreme court had have reversed the case generally, suggesting that a motion to amend would have been proper in the court below under a new trial where the defendants could have met the plaintiffs in equal terms. This proposition of the plaintiffs, which they say is backed up by the opinion of the supreme court, looks a great deal like and — effect is the opening of the case for a rehearing in behalf of the plaintiffs but not for the defendants.

A new trial for one party and not for the other, opening the case for additional evidence in favor of the plaintiffs without giving any opportunity to the defendants to introduce counter-proofs.

By the opinion of the supreme court the amended record would be evidence in the case; it would be new evidence. Surely this would be against all law and precedent and the question of such amendment.

Cook *vs.* Ottawa University, 14 Kas., 548; St. Joe & D. R. R. Co. *vs.* Dryden, 17 Kas., 278; Hurd *vs.* L., 26 Ills., 496; Hill *vs.* Miller, 7 La., 466.

There would be no sound discretion in that.

It is the duty of this court to grant such an amendment only on a proper showing, and all parties interested or claiming an interest in the property to be affected by such amendment are entitled to be heard.

It is in the discretion of this court to allow or not to allow such amendments accordingly as it believes it will subserve all the equities of the case.

And it can grant such amendment on such terms as it may deem

proper; and in the exercise of that discretion, after it has heard the evidence, it can, with a view of all the general equities of the case argued in the briefs of defendants to the trial and supreme courts, herewith filed, grant such amendment only on the terms that a new trial is granted and the plaintiffs pay all costs of this suit.

The superior equities of the defendants in the Tourtelott case demands that such a direction shall be given to this conflict as shall result in a new trial, with leave to plaintiffs to make their application for amendment at the proper time on a new hearing of the case.

To that end the motion of the plaintiffs should be dismissed.

Respectfully submitted.

JAMES M. MASON,
Per Himself, an Attorney for the Defendants in Above Suit 2547.

276 *Brief for District Court.*

In the District Court of 10th Judicial District, Wyandotte County, Kansas.

GEORGE P. TOURTELOTT and GEORGE P. ALLCUTT, Plaintiffs,
vs.
CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERING, NICHOLAS MCALPINE, JAMES M. MASON, Defendants. } No. 2547.

Appearances: Pratt, Brumback, and Ferry, for plaintiffs; Mason, Cobb, Cree, Douglass and Smith, for defendants.

Brief to be used in supreme court, wherein plaintiffs in error were defendants below.

Brief "B."

277 GEORGE W. TOURTELOTT *et al.*
vs.
WILLIAM WILKINS *et al.*

Statement of Case—Facts.

I.

1. In 1860 David E. James, under whom both parties claim title to the lands in controversy, was possessed of an undivided ⅜ interest in all that part of what is known as Armstrong's reserve No. 1 lying north of the old bed of Turkey creek, upon a part of which is situated the lands in controversy.

2. And, being so entitled to said undivided interest, he did, in the same year, make a title bond to one James Gladden for an undivided ten (10) acres in said lands.

The title bond referred to is hereto attached and marked Exhibit "A," having been duly recorded, Book A, page 462.

3. For valuable consideration Gladden assigned said title bond to

Henry R. Deegar in trust for the benefit of Joseph E. Snyder. Seegar was the brother-in-law of Snyder, and the two were intimately connected with each other in their business arrangements.

4. And said Snyder at the time was seriously involved in debt and was in failing circumstances and desired his interest in said land to be held in the name of his brother-in-law, Segar, for no other purpose than that of concealing it from his (Snyder's) creditors.

5. Afterwards it was verbally agreed by and between said D. E. James and said Joseph E. Snyder that the said ten acres of Snyder should be located somewhere on the State line between Missouri and Kansas, near where the State Line depot now stands.

That afterwards, about the year 1863, for reasons deemed sufficient between themselves, it was verbally agreed between James and Snyder that, instead of the said ten (10) acres near the State line, said Snyder should have six (6) acres on the Missouri river, somewhere between the State line and the mouth of the Kansas river. Each of the said verbal agreements, however, were subject to the fact that at the time said James only had an interest of an undivided three-eighths ($\frac{3}{8}$) of said land in common with others, and such agreement depended and was contingent upon whether said James could succeed in obtaining full title to such lands upon final partition between him and other owners therein.

6. That, further to satisfy and to secure Snyder in the fulfillment of such obligations on the part of said James, a carte-blanche deed was made—that is, a deed otherwise executed and acknowledged by said James and his wife, but blank as to name of grantee and description of the property to be conveyed, and dated July 27th, 1864, and this was delivered to said Snyder by said James.

7. That afterwards, in partition case No. 911, Thomas Ewing *et al. vs.* William Weer *et al.*, in the district court of Wyandotte county, Kansas, under report of commissioners confirmed Oct. 15th, 1867,

278 the above lands held in common by the various owners thereof were partitioned, and the certain allotment No. 15 in said report was set out to said David E. James.

See final record of said partition suit, introduced by plaintiffs in this suit, marked Exhibit "B" 2.

Also plat filed with report of commissioners therein, marked Exhibit B.

8. The said lot, marked 15, designated as the allotment set off to said D. E. James, being the tract upon which the lands in controversy are situated.

9. That afterwards, on the 2nd day of December, 1867, said Joseph E. Snyder filed his voluntary petition in bankruptcy in the western district of Missouri and proceedings in bankruptcy followed, said Snyder setting up under oath in his original schedule therein filed that he had no property except his tools in trade and certain exempted property.

See Exhibit C, transcript of proceedings in bankruptcy in said court, hereto attached and herewith filed; also recorded assignments, Wyandotte county, Kansas, Exhibits A 1 and A 2.

10. That at this time and for a long time prior thereto the en-

croachments of the water upon the banks of the Missouri river along the northeasterly margin of this land became the source of serious alarm to the owners of land in common in said reserve, and in the spring of 1868 the washings along the bank of said river increased to such an extent that a combined effort was made by the persons interested in said lands to arrange with James F. Joy and others, representing the Hannibal and St. Joseph Railroad Company, to donate among them a certain quantity of land along the bank of said river for railroad purposes as a consideration that said company would rip-rap and stop the washings upon said bank, which arrangement was finally effected some time in the summer of 1868, and on August 24th, 1868, a deed was made by David E. James and wife to said James F. Joy for the certain ten (10) acres of land along the river front of said allotment No. 15, in said petition assigned to David E. James, which said ten (10) acres is marked and designated on the plats marked C and D, filed herein by plaintiffs as the lands of James F. Joy; that other owners of lands in common on said reserve made similar donations of land for the above purpose.

11. And the said deeds to Joy were deposited in the First National Bank of Kansas City, Missouri, in escrow, to be delivered upon the performance of said agreement. Said rip-rapping was commenced in January and completed and papers delivered in the spring following; that after this arrangement was made said David E. James and wife departed for Michigan.

See evidence of Dr. G. B. Wood, Report of Morris E. Jones, page 16 *et seq.*

12. That afterwards, Sept., 1868 (see page 44 of the Bankrupt Record), said Joseph E. Snyder obtained an order for his discharge in bankruptcy.

13. That after he had obtained said discharge and while said James was still in Michigan said Snyder called upon Dr. George B. Wood and showed him the said carte-blanche deed that James had made to him (Snyder) dated in 1864, and asked Dr. Wood concerning the arrangement with Joy and the said railroad company, and Dr. Wood then informed said Snyder concerning the arrangement, and from Dr. Wood at that time Snyder received full notice of all the terms of the arrangement between said D. E. James and said Joy and Company.

279 14. That Snyder then declared his intention to fill up and record the said carte-blanche deed; that Dr. Wood tried to dissuade Snyder from doing this on account of the complications it would cause with the arrangements made with Joy and Company.

15. But said Snyder, notwithstanding the remonstrance of Dr. Wood in behalf of James, in his absence filled up and on the 25th day of October, 1868, filed the same for record in the office of register of deeds of said county. See Exhibit "D." It was also proven by the commissioners in said partition suit in McGrew and Sharp, page 21 of report of Morris E. Jones, that no one could have known prior to the report of the commissioners just where the lands of each owner would be located.

16. In 1869, said James, having returned from Michigan, ascertained what Snyder had done in his absence in regard to filling up the said deed, and was greatly incensed and indignant at the course Snyder had taken on account of the complications it was liable to cause with Joy and the railroad company, and had an interview with said Snyder.

17. At which time a new arrangement and compromise was made between James and Snyder, wherein Snyder agreed to quitclaim the lands he had so attempted to locate in the absence of James and clear the record of said carte-blanche deed location, and thereupon said James was to convey to said Snyder a certain four (4) acres situated entirely off and to the westward of said Joy tract and entirely outside of the said Joy purchase previously mentioned.

18. Which said arrangement was thereupon immediately consummated by delivering of papers, said four (4) acres being given in lieu of the six (6) verbally promised to Snyder, and said six (6) in lieu of the ten (10) first mentioned, in final settlement of all the rights of Snyder in said bottom and in final settlement of the equity arising under the title bond of 1860 aforesaid, and in further completion of said compromise and settlement said Henry R. Seegar at that time executed a release of said title bond of 1860.

19. After all these papers were filed for record in said county, and on February 9th, 1870, the creditors of the late bankrupt, Joseph E. Snyder, seeing these deeds upon the records of Wyandotte county, became convinced that said Snyder had fraudulently obtained his discharge, and one Joseph L. Norman, one of the grantors of the plaintiffs herein, who had purchased for a nominal sum a large claim of about five thousand dollars ($5,000) from Jacard and Company, filed his petition in the bankrupt court to have said discharge set aside—

See Bankrupt Record, page 47 *et secq.*, and also praying for other and further relief.

20. And an examination is had of the affairs of said Joseph E. Snyder before Joseph V. C. Karnes, United States commissioner at Kansas City, March 25, 1870.

See page 59 of Bankrupt Record; depositions, page 62 *et secq.* C.

21. Afterwards, page 67, the court finds that said bankrupt had property which belonged to the bankrupt estate which had not been administered upon, and orders Samuel A. Vose to proceed according to law, &c.

Afterwards said Vose files his resignation, Feb. 11th, 1871, page 67.

280 Page 68. Said Vose's resignation accepted and Henry N. Ess appointed assignee of said bankrupt estate, vice Samuel A. Vose, resigned.

And said Vose ordered to convey to said Ess all the estate, &c.

Page 69. Acceptance of the trust and bond filed by Ess approved.

22. Page 71. The case reinstated on the docket as a case in bankruptcy by order of the court and Ess ordered to file complete schedule of the property of the bankrupt.

28. Page 72. Discharge set aside.

Page 73. Schedule of property filed by Ess.

77. Application by Ess to have certain property appraised and sold.

24. 80. Order to sell the real estate of the bankrupt.

82. Report of sale to Judd, 88, 89.

25. 90. Sale approved and deed ordered.

26. Such sale was duly made and is hereto appended, marked Exhibit "H," and said deed was duly placed upon the records of said county October 27, 1871, and covers the land in controversy herein.

27. The evidence herein also discloses the fact that Lafayette Traber, one of the immediate grantors of these plaintiffs, was a half owner with said Joseph L. Norman of above-mentioned Jaccard claim; that the proceeds of the said bankrupt sale to Byron Judd of some five or six thousand dollars was applied chiefly to the liquidation of such Jaccard claim, then held and prosecuted in the name of Joseph L. Norman.

28. That said Norman and Traber were interested therein as partners and induced and procured the discharge of said bankrupt, Joseph E. Snyder, to be set aside, and also instituted the proceedings, and in the name of said Norman obtained the subsequent orders which subjected the property mentioned and described in said bankrupt deed to the payment of said Jaccard claim.

29. That afterwards, in the year 1874, said Traber and Norman conceived the idea that by reason of the fact that the said deed, a copy of which is hereto attached, marked Exhibit "E," for said four (4) acres of land was dated in 1869, and the petition in bankruptcy was filed by Snyder in 1867, therefore the property mentioned in said deed was after-acquired property and did not pass to the assignee as a part of the "estate of the bankrupt;" that this, as a fact, necessarily followed from the fact of the date of said deed being in 1869—

Was the first grand blunder made by the plaintiffs in and about this business and was primarily and fundamentally the cause of all the trouble that has arisen in this conflict of title.

30. The plaintiffs, also, as appears from the evidence and the attitude the parties have taken in this cause, were also at the time relying on some matters of technical and imaginary misdescription which they also conceived to exist in said bankrupt deed.

281 31. Relying on these technical and inequitable features of the case and seeing, as they thought, another opportunity to subject this same property to a new and entirely different class of debts by which they might reap another rich harvest of profit out of the same subject-matter—

32. This same Traber and Norman who had so figured previously in said bankrupt proceedings—

Procured the control of some old and abandoned claims against Joseph E. Snyder—

33. One of which, the claim in favor of one C. F. Welland, was at the time barred by the statute of limitations, as will be seen by the examination of the files in said cause No. 1735—

34. And another in favor of Henry R. Seegar, and which was an old claim, dating from about 1863, and which might have been proven up under the bankruptcy.

See files in case No. 1734.

35. And on the grounds of these alleged technical defects in the title under this bankrupt sale to said Judd set up the pretension that the property in controversy still belonged to said Joseph E. Snyder in his own individual and private estate.

36. And instituting proceedings in attachment sold out the same under sheriff's deeds made upon an assumed publication service and under an assumed jurisdiction, which the files and papers in the said cases show that they did not obtain.

And procuring sheriff's attachment deeds under said proceedings placed them upon record in said county and set up a claim of title to the lands mentioned therein.

37. That said lands were bought at said sheriff's sale nominally in the name of Lafayette Traber, but for the benefit of said Traber and Norman; that in said attachment proceedings said Traber acted for himself and as the agent and trustee for said Norman, and that in said bankrupt proceedings said Norman acted for himself and as agent and trustee for said Traber.

See evidence of Lafayette Traber, pages 2 to 8 of the Report of the Stenographer; also bankrupt record and files in said case- Nos. 1734 and 1735.

See copies of said sheriff's deeds, Exhibit- Nos. — and —, page- No. — of Plaintiffs' Record.

38. The evidence also discloses that Traber under his claim made some move of rather indefinite nature towards taking possession of said lands mentioned in said sheriff's deeds, which occurred some time in the fall of 1878 or spring of 1879.

39. That at the time of his acquiring said pretended claim the said land was claimed by S. A. Cobb and A. B. Bartlett, grantees of Byron Judd, under conveyance, a copy of which is hereto appended, marked Exhibit "I," and that in 1877 said Coob and Bartlett leased the same to one George Altop under lease, hereto appended, ma-ked Exhibit "J."

See Stenographer's Report, page 37.

40. That said George Altop held the same under possession by said lease until the same was leased to Mrs. Street. See
282 lease marked Exhibit "K." And that said Mrs. Street held the same until said S. A. Cobb died.

See Report of Stenographer, page 29. And that said Mrs. Street continued to hold the same up to and including the time when the defendant Nicholas McAlpine obtained deed to said property, dated June 14th, 1879, which is hereto appended, marked "L," and up to the time that said Nicholas McAlpine and the defendants took possession under their said conveyance, some time in July, 1879, and that the defendants have ever since held and are now in

possession of the same and have fenced and built improvements upon said land—

Except the certain tract of land 25 by 54 feet on the northeasterly corner of Wood street and intersection of alley, forming the northerly boundary of Kansas City, Kansas, platted part, occupied by one Rhodie, as shown in the evidence.

Report of Stenographer, see pages 3 to 16, and lease filed by plaintiffs, see Exhibit No. — of Plaintiffs' Record.

And also the certain tract known as the Honef tract, 50 by 50 feet, partly on and partly not on the lands purchased by the defendant McAlpine. See lease offered by plaintiff-, Exhibit No. —.

See evidence of Traber and Rhodie and Tourtelott in plaintiffs' case. Report of Stenographer, pages 2 to 16.

Both of which tracts were excepted from plaintiffs' petition, and the lands covered by the lease last above mentioned were no part of the lands in controversy, and the evidence thereto was objected to by defendant- for that reason.

Further evidence was given by the plaintiff-, in which it was shown or attempted to be shown that said plaintiffs also gave a lease to one Taylor and one Jones, each for limited parcels of said land.

1. See leases offered by plaintiffs, Exhibits No. — and —, pages —, Plaintiffs' Record.

But it was also shown in the same evidence that said Jones, if he was ever on the land at all—see contradictory statements of Traber, Tourtelotte, Rhodie, and Bartlett—leased the same from some woman who claimed possession there at the time before Traber gave any papers such as he testified to. See page 5, same Report of Stenographer, presumed to be Mrs. Cobb or Mrs. Street.

And it is not clear that the same is not also true of Taylor.

And the general drift of all the evidence in regard to the matter of possession by plaintiffs is to the effect that whatever possession they had on said land was not only quite limited in its extent and bounded by the small enclosures mentioned in the said leases, but also was tortuous, and the plaintiffs were trespassers, if any possession they had.

All of which is satisfactorily shown by the report of evidence of said stenographers and said leases above mentioned.

Mr. Tourtelott, in his evidence, pages 11, 12, incidentally mentions a colored man named Smith, whom he says he gave liberty to build a house thereon.

This, however, was very indefinite as to what Smith did, if anything, and what part he took possession of, if any, and a copy of an agreement and lease is hereto appended to a colored man
283 named Smith, who attorned to the defendant-, as will be seen, marked Exhibits "M."

But this evidence of Tourtelott is negatived by the evidence of Bartlett and Mason, and if not we call attention of the court to

the evidence of the written agreement and lease by said Mason to said Smith, signed by said Smith.

41. Plaintiffs also attempt to show by Mr. Bartlett—see Report of Stenographer, pages 30 to 33, 37, 38, etc.—that S. A. Cobb and A. Bartlett entertained considerable doubt at one time whether they had a good title.

But it is also shown by the same witness that Bartlett and Cobb held and maintained possession of all said land up to the time that McAlpine bought and never yielded up or admitted to Traber in any shape that the plaintiff- or their grantors had any title whatever.

See said report, pages 32, 33, 38.

42. Effort is also made to prove through the witness (Olden, page 39, and by Bartlett, page 33) that McAlpine had notice at the time of his purchase that the witness Bartlett made no claim to said property.

All of which, if not too indefinite and equivocal to be reliable, was negatived by the evidence of N. McAlpine. Page- 34, 35.

44. Attempt was also made in the same evidence to show that certain redemption money was drawn by Bartlett and Downs from the county treasury's office prior to the time of the sale to McAlpine, in June, 1879.

Pages 37, 38.

See contrary evidence, Albright and McAlpine, pages 45, 46; Mason, page 47, and entry in receipt book, page 45, and tax sale record entry of 1875, page 45, and certified copy of bond and affidavit mentioned by Bartlett in his evidence of August 19, 1879, marked Exhibit- "N" and "O."

45. There were also introduced two tax deeds by defendant-.

See Exhibits "P" and "Q" in the power of attorney, by Richards; see Exhibit "R."

46. Also quitclaim deed from the widow and heirs of David E. James.

See Exhibit "S."

47. Also the petition, files, affidavits, and proceedings in attachment upon which plaintiffs ground their sheriff's deeds. See cases 1734 and 1735.

48. Other conveyances of title were also introduced by defendants. See conveyances by Cobb and Bartlett, Exhibits "T" and "U," and powers of attorney to E. L. Bartlett, Exhibits "V" and "W."

All of which shows the title of said lands in controversy to be in the defendants from three different sources of title:

First. From the bankrupt sale and the chain from thence down.

Second. From the widow and heirs of D. E. James.

Third. From said tax deeds.

And the evidence shows that even the deed from James to Sny-

der, through which alone plaintiff- claims title, does not cover the land in controversy. Four experts, Hale, Ely, Allen, and Smith, testify that the southwest corner of Joy tract is a point farthest west on line between the Wood and James allotments in plat "C," O'Flaherty alone taking a contrary position. Again, as to description in bankrupt deed to Judd, under which defendants
284 claim, said four experts testify that a proper location would cover the lands in controversy.

See page-, 23 to 29, Stenographer's Report.

The bare statement of this case to our minds is sufficient to insure a decision for defendants, for indeed it is difficult to see how the plaintiffs can found even an appearance of right to the land on the well-recognized principles of law, equity, and justice.

Brief.

II.

Plaintiffs must rely on the strength of their own title and not on the weakness of defendants; therefore—

1st. If the description in the deed from James to Snyder did not cover the land in controversy, plaintiffs claiming under Snyder cannot recover; or

2nd. If that deed did not cover the land, but was part of Snyder's assets as a bankrupt, then plaintiff- claiming it as acquired after bankruptcy cannot recover, even if defendants have no title, on account of invalid description in bankrupt deed to Judd or otherwise; or

3rd. Even if the four (4) acres were after acquired, if the attachment proceedings against Snyder were defective and inoperative to pass title, then, even if defendants have no title, plaintiffs cannot recover.

But the evidence shows not only that plaintiffs have no title and no equities, but that defendants have not only title and possession but also the justice and equities of the case.

1. Did the description in the four (4) acre deed from James to Snyder cover the land, and did the description in the deed from Snyder's assignee to Judd cover the land?

Much of plaintiffs' brief is consumed in trying to make the northwest corner of the Joy tract appear to be the southwest corner, and showing how ambiguous calls in a deed may be explained by parol proof and the surrounding circumstances, and in doing so make out clearly that the exceptions taken by them to the description in bankruptcy deed to Byron Judd under which defendants claim are without any foundation.

The plaintiffs assume that the southwest corner of the Joy land is identical with the northwest corner of the James land. They say the defendants probably never thought of that. Certainly not; and we do not see how any one could think of that seriously.

Two wrongs will never make a right, but there is one thing we

did think of in this connection and that is this, that the southwest corner of the Joy tract, situated on the line of the Wood allotment, was identical with the southeast corner of the James land on the same line.

Now, by substitution we have as the language of the four (4) acre deed, viz: Commencing at the southeast corner of the James land, said southeast corner of the James land being the northwest corner of the James land.

The last call for the northwest corner of James land being repugnant and utterly inconsistent with the former call, the following authority is in point:

53 Mo., 156; 55 Mo., 218.

285 A call in a deed may be rejected if enough still remains to identify the land with certainty, but in this deed there is nothing to amend by and there are no subsequent calls that can save the description as in the bankrupt deed to Judd.

The description either does not cover the land in controversy or it is void for uncertainty.

Again, the plaintiffs say that the point that is both southerly and westerly is the southwest corner of the Joy tract, and they indicate the point farther west on the line between the James and the Swope allotment.

Now is that the most southerly point?

But let us try to be charitable to the unfortunate. We will give them the benefit of mathematics—and figures never lie.

We suppose they mean, if they mean anything by this anomolous proposition of theirs, that the point, the sum of whose southings and westings is greater than that of any other point, is the southwest corner.

Now, algebra for it:

This proposition must have reference to the center of the bulk of the land, for there is no common sense in it.

It is rather a strange proposition anyway, but we like to follow out the gentlemen by their own rules; we like to indulge them.

So we will draw a plat.

We first find the exact local center of that Joy tract, the center of gravity. We then pass a line directly through that center from north to south and a line through the same point from east to west. The plat will be as follows:

Now, from the point *a* let fall the perpendicular line *x* to the *e* and *w* line and from the point *d* let fall in the same line that perpendicular *y*, and from the points *a* and *d* also let fall on the *n* and *s* line the perpendiculars *w* and *x*.

Now, by careful compilation I find the line—

x equals 500 feet.
y " 550 "
w " 300 "
z " 50 "

Now, the point *a* has no southings south of the center of said tract, but, on the contrary, it—

	a
Has northings 500 feet, or, we may say, algebraically, southings	500 feet.
The point *a* has westings, we may say algebraically	300 "
	200 "
	d
Now, the point *d* has southings	550 feet.
The point *d* has eastings 50 feet or westings	50
	500 "

286 Now, take the sum of each group of figures compiled:

Result: Point *a* has 200 feet less than nothing as the compiled sum of its southings and westings, while *d* has 500 feet actual as the compiled sum of its southings and westings.

Will the gentlemen please say again which point is the southwest corner according to their own rule which they have given?

The reasoning that follows this in regard to this plat of Kansas City, Kansas, executed and filed by James, is something better and gives some indication of returning reason to the plaintiffs; but the reason why this cannot help them to prove where the southwest corner of the Joy tract is occurs in the fact that it may refer to some other grant or conveyance as well as to the one of 1869, and strictly harmonious with the finding of the bankrupt court.

"That the property sold to Judd by the assignee belonged to the estate of the bankrupt." Whether because James considered that Snyder, in filling the bankrupt deed of 1864, made an error in locating his land at the time two (2) acres too far east under the supposition that the base line from the southeast corner of sec. 11, 11, 25 N. 28½ W. was located 231 feet westward of the Missouri bank, as is shown by the plat on file in the partition case, No. 911, date 1867, and not taking heed that from the time of the survey in 1867 to the filling in of the deed in 1868 the whole of that 231 feet had washed away, leaving the point where the said base line crossed the northerly line of James' allotment, No. 15, in the river.

Evidently Snyder did not know this. If he had it is not supposable that he would have located two (2) acres of this land in the river. He evidently supposed that he was locating himself land two (2) acres farther west, and just where the four (4) acres was afterwards made by James in 1869, but also including the two (2) acres deeded in 1868 to Joy between what is now James street and the Missouri river.

And it is not certain, on a careful review of the description in the filed carte-blanche of 1864, although there are contradictory and ambiguous calls in the deed in stating:

1st. That the commencing point is north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), eleven (11), twenty-five (25), yet that the subsequent calls in that description would be held to include the lands in controversy by reason-

able intendment, for it is evident that the surveyor would have been obliged to drown himself in the Missouri river to find the commencing point of that tract in 1868 (a thing which I would suggest he would not be likely to do), and, therefore, the legal presumption may be that he was unable to find the monument and must have thought it to have been intended as a joke on him by Snyder to be asked to do so.

But the subsequent calls in that description called for the northerly line of D. E. James' allotment No. 15 by reasonable intendment and for a line eight hundred and forty-one (841) feet, or, rather, two lines, one six hundred and forty (640) feet and another two hundred and thirty-one (231) feet in extension, eight hundred and forty-one (841) feet west of the then bank of the Missouri river, and as its western boundary, and running south twenty-eight and one-half (28½) degrees east three hundred (300) feet, and from thence a home call of eight hundred and forty-one (841) feet to the Missouri river at that time, October, 1868 (and subsequent to that the testimony showed there was no washing, which fact made the
287 river a very good monument); thence along the said river, making the river the eastern boundary of said land, &c.; all of which the court will see by the description alluded to. This makes a piece of land abutting three hundred (300) feet on the Missouri river and running back south sixty-one and one-half (61½) degrees west the eight hundred and forty-one (841) feet in the form of a rectangle, and it is plain what the intention was in 1868, but the difficulty arose in trying to fill a deed in 1868 dated in 1864.

Snyder evidently did not take into consideration the extent of the washings subsequent to the report of the commissioners and plat in petition, although he bottowed the description from the petition case and the plat and must have been misled by it.

Although the matter of intendment was evident to include the lands in controversy, yet it would appear on the records to have been referable to the lands as they stood in 1864, which would not include the lands in controversy; yet if Snyder had been authorized to scratch out the date 1864 and change it to 1868, have might he made it appear nearly right on the records.

The date and description taken together did not make a good record, and James might have seen fit to have treated it in the light of a mistake and to concede to them the location as it would have stood in 1868, insisting, however, that in view of the washings and the contribution of riprapping and other considerations that Snyder should yield up his claim to the Joy purchase.

We are not particular about the southwest corner business, but we thought that since the plaintiffs were disposed to found their case purely on a technicality that a technicality was good enough to meet a technicality, and if they claim that this location of 1864 was a separate, independent purchase, not referable to the original rights of 1860, therefore not belonging to the bankrupt estate, then we claim that it does not describe the lands in controversy.

Now, the commencing point in the four (4) acre tract to Snyder calls for the southwest corner of the ten (10) acres deeded to James

F. Joy; unmistakably the southwest corner of the Joy tract is at the point farthest west in the line between the James and Wood allotments—plats "C" and "D."

This is evidence- by four (4) competent and reasonable witnesses on the part of the defendants against one bewildered gentleman who certainly has lost his reckoning, for I should as soon have expected these plaintiffs to have produced witnesses to prove that the general current of the Missouri river was from Kansas City up towards Omaha or the Black Hills as to have heard this witness locate the southwest corner of the Joy tract at a point which every conceivable rule of common sense refutes.

Evidently the northwest corner of the Joy tract, as properly as it can be spoken, is at the point nearest to the northwest quadrant and the southwest corner is the corner nearest to the southwest quadrant, laying the compass on near the center of the land, or, if you circumscribe a rectangle about the lands, thus:

For sketch of rectangle see original copy of brief.

288 Then the corner of said land nearest in its approach to the northwest corner of said rectangle is, more properly speaking, the northwest corner of said land, and the corner nearest in its approach to the southwest corner of such rectangle is the southwest corner of said land, and so on round.

Besides, the rule given by any competent treatise on surveying is to keep the land on the right-hand side as you run round it, and an examination of the deed to James F. Joy, No. — of plaintiffs' record, page —, — is so surveyed by running around, keeping the land on the right, and, hence, when the surveyor comes to the line marked "*x*" he will run southwest, and that will be the southwest corner. The next line, marked "*z*," he will run northwest, and the point reached in that direction will be the northwest corner of said land.

It is evidence- by a careful investigation of the record that he could not have filled in that description which he put into his carte-blanche deed unless by reference to the report of the commissioners in partition case, No. 911, that was not in existence, or the survey upon which it was founded, until the fall of 1867. Nor was the base line of the survey, the parcels, or the lines of the various allotments located until the fall of 1867, and no one had any foreknowledge of the distance which his line would have been from the initial point, the southeast corner of section eleven (11), eleven (11), twenty-five (25), and by no possible means could D. E. James or Snyder have known that the northerly line of D. E. James' allotment would have been just thirty-six hundred and four and one-half (3,604½) feet north twenty-eight and one-half (28½) degrees west from the said section corner, or that such northerly line would run south sixty-one and one-half (61½) degrees west, precisely as the partition indicated.

Hence the proof offered of the record in partition, taken in connection with the evidence of the commissioners, Sharp and McGrew, and of Dr. Geo. B. Wood, is conclusive that the carte-blanche deed was filled in in the fall of 1868, which was nearly a year after the petition in bankruptcy was filed.

Therefore it is just as reasonable for the plaintiffs to assert that because Snyder did not fill in his carte-blanche deed till the fall of 1868 that therefore that land did not belong to the estate of the bankrupt. Therefore the bankrupt estate had no land, because, on the principle that these gentlemen contend for, the deed must be made before the petition is filed in order to vest the assignee with the title.

Yet the plaintiffs are contending, in strange contradiction to their own theory, that the lands belonging to the assignee are the original six acres first filled in by Snyder.

The fact is these two different pieces were each of them first located after the bankruptcy, and the reasoning they urge as to the four (4) acres would apply equally to the six-acre tract.

But it is not necessary that a party should have a formal conveyance of a piece of land in order to have a title to it, and the deed is not conclusive as to the time when a title first accrued. It may be only for a title which accrued some time prior to its date, and we may infer that the plat of 1869 was made with reference to some former grant, prior to 1869, if it becomes necessary to do so.

The conveyance of 1869 does not correctly describe the land platted, yet the bankrupt deed to Judd surely describes the
289 land platted to Joseph E. Snyder on said plat, although it extends farther to the westward than would be necessary to include it.

It commences at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section 11, 11, 25. See Bankrupt Record, pages 73 to 90, where the words on the "northerly" line of James street extended occur.

The angle of twenty-eight and one-half (28½) degrees west is wrong, as that will not be on the northerly line of James street; but we must disregard the angle, for the call says on the northerly line of James street extended. There we must go, either upon a swinging curve thirty-six hundred and four and one-half (3,604½) feet from the initial point or south sixty-one and one-half (61½) degrees west, at right angles to the base line by the most direct route, as some of the experts testified, and which we think is the most correct doctrine, but either theory is sufficient in this suit, for in either case the deed describes the land in controversy.

The evidence shows that a line thirty-six hundred and four and one-half (3,604½) feet long from the initial point to the northerly line of James street would reach within fifteen (15) feet of the northerly line of James' allotment, No. 15, but, following the general analogies of lines and angles, it is then reasonable to suppose that the point of intersection of the northerly line of the allotment with the northerly line of James street extended was the point intended, since, upon the angle of twenty-eight and one-half (28½) degrees west, it did reach the said northerly line of the allotment.

If we then go south sixty-one and one-half (61½) degrees west six hundred and forty (640) feet and two (2) inches, we go some distance beyond the western bounds of the land in controversy; thence south

twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty (640) feet and two (2) inches to the said northerly line of James street extended; thence north twenty-eight and one-half (28½) degrees west three hundred (300) feet along the said northerly line of James street extended to the beginning.

Even if the first calls did not sufficiently indicate, beyond a doubt, the commencement, this home call rendered it very certain and definite, viz: thence north twenty-eight and one-half (28½) degrees west along the said northerly line of James street extended to the beginning. There is no language more certain or precise that could be used. It conclusively establishes the northerly line of James street as the easterly line of this first-mentioned four (4) acres tract, and also the fact that such tract abuts three hundred (300) feet on James street and extends south sixty-one and one-half (61½) degrees west six hundred and forty (640) feet and two (2) inches three hundred (300) feet wide.

James street is an established monument, and can be located precisely from the plat referred to in the office of the register of deeds, No. 9, to which plat this deed also refers.

But if this was not sufficiently certain, mark the language that follows: "Also commencing at the same point, thence north sixty-one and one-half (61½) degrees east to the Missouri river; thence south twenty-eight and one-half (28½) degrees east along the
290 bank of said river three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the said northerly line of James street extended; thence north twenty-eight and one-half (28½) degrees west along said northerly line of James street extended three hundred (300) feet to the beginning; two (2) acres."

This conclusively proves that there is a plat of ground two (2) acres between the river and James street, three hundred (300) feet abutting on said river and James street and two hundred and thirty-one (231) feet in width, two (2) acres, more or less.

The whole length of the two tracts is eight hundred and seventy-one (871) feet and two (2) inches, abutting on the river three hundred (300) feet and running back eight hundred and seventy-one (871) feet south sixty-one and one-half (61½) degrees west.

With two such monuments as the Missouri river and James street, discarding the angle 28½ degrees west, we have sufficient data left with which to locate these lands.

The partition of 1867 shows the angle of the base line to be 28½ degrees west. The plat of Kansas City, Kansas, reads: N. 28 degrees and ten (10) minutes. Science explains this discrepancy, however. The plat is dated in 1869. The bankrupt deed of 1871 evidently follows the old partition suit of 1867, which is more correct.

And those streets were located actually parallel to the old base line of 1867, for which, however, the compass then read, by the meridian used, N. 28 10 W.; that this all arises from changes in the magnetic pole.

The plats "C" and "D," filed by the plaintiffs with their brief,

though generally correct, show the Joy tract too wide at the time the washing ceases. It purports to show the bank of the Missouri river in 1878. If that means in the early spring of 1868, before the heavy washings, it may be correct, but if the plaintiffs mean in October, 1868, it is laid down in the figures in plat "C" about 58 feet too wide, as the width now is about 300 feet. See evidence of Hale, surveyor, page — of report of stenographer; also evidence of Wood, page —.

The bankrupt deed covers the land in controversy, and our commencement point must be located somewhere on one of the lines of James street extended.

And at all events, if the deed is defective and the record is correct, the plaintiffs gain nothing by taking such a position, as it gives no title to the plaintiffs, but the title and possession is in the defendants, and they can, if necessary, apply in equity for a correction of the deed and proceedings by the proper authority, for they have the decree of the court, order of sale, report of sale, and they have paid the purchase-money and the sale has received the approval of the court, and a description in the deed will not prejudice the title of the defendants.

We here cite the following authorities:

11 Kas., 533; 16 Kas., 312; 44 Mo., 185; 45 Mo., 571; 64 Mo., 334; 31 Ark., 62; 38 Cal., 481; 3 Dill., 312; 44 Vt., 268; 67 N. C., 489; 34 Tex., 44; 99 Mass., 367; 4 Oregon, 177; 79 Ills., 233.

But if Snyder had any land such as this bankrupt described it all came to him by right of his contracts with James in 1860
291 and belonged to his assignee, as Dr. Wood and Seegar both testify that he had no other interests in said bottoms except what he got under said title bonds or contracts of 1860.

And if Snyder had any such land as is this described defendants got it under their bankrupt deed. If he had none, then the title remained in D. E. James, and the defendants take their title from the widow and heirs of David E. James.

Plaintiffs object to our being allowed to introduce the James deed, as they claim it was a title acquired after the commencement of the suit. We have a right to show it, as we obtained an order of court to file this supplemental pleading setting up his nearly acquired title, and then the plaintiffs accepted the situation and filed their reply to that supplemental pleading. It is too late now to raise the point.

But there is no force in the objection, for if we have no right to show that we got the James title, still it is an outstanding title, and that of itself defeats the plaintiff's case just as certainly, since, as we have before stated, the plaintiff must recover on the strength of his own title and not on the weakness of his adversary's title.

See order of court allowing supplemental answer to be filed, April 16, 1830; trial docket, 27 Cal., 28; 1 Neb., 371; 22 Cal., 513; 23 Cal., 237.

III.

The Sheriff's Deed is Void.

Both parties claim to hold the title once vested in Snyder. The title of the defendants is prior to that of plaintiffs, and the former insist that the attachment proceedings upon which the title of plaintiffs rest were void for want of jurisdiction over the property. Service was by publication, and no appearance was made by Snyder. If there was no jurisdiction over the *res* none was obtained. Section- 197, 198, and 205 of the code must be examined in order to determine whether the proceedings show an attachment of the property of Snyder. By section 205 the officer is required to "return upon every order of attachment what he has done under it." The return thus required constitutes the sole and exclusive evidence of the performance of the acts constituting an execution of the order of attachment. What their acts are is laid down in sections 197, 198, independently of any statutory requirement. Any officer executing any jurisdictional process must show to the court, by an endorsement on the process, what acts he has done in the execution of such process. Until this is done there is no evidence of the jurisdictional facts. Jurisdiction is obtained only by the issuance of proper process, its legal service, and due return. A full discussion of this rule will be found in 41 Barbour, 102, which is referred to in Briggs *vs.* Tye, 16 Kan., 285.

A written return is necessary to perfect the attachment. (Drake, sec. 204.) It is argued that the officer need not set forth in his return the performance of the acts specified in sections 197 and 198, but the performance of these acts create- and constitute- the attachment and give- rise to the lien. If this be true a return not showing their performance fails to show jurisdiction; or, in other words, fails to show any attachment.

In Tomlinson *vs.* Stites, 5 Dutcher, N. Y., 427, the court remarks: "The writ itself, without the sheriff, is powerless; that does not attach the lands; it commands him to do it. The important question is, How is the sheriff to give effect to the writ thus
292 powerless without his aid? How is he to attach the land?"

And, again, in the same case it is said, "He (the sheriff) is to do some act by virtue of his writ to charge the land to attach, to fasten them, to subject them to the plaintiff's debt.

After he has done this act and returned the mode of its performance his power to do any act to affect the land is ended. Until the sheriff returns that he has attached something the court cannot proceed; its jurisdiction has not attached upon anything." The court then enlarges upon the requirement of the statute that the officer must go upon the land and declare that he attaches it, etc., and adds "that there may be no doubt what property is attached he is required to return with the writ an inventory and appraisement of all the property and estate so attached."

The returns in question here fail to show compliance with the statute in several particulars. They do not show that the officer declared that "by virtue of the order" he attached the land. The

order constitutes the sole authority of the office and the omission to show that he acts under it and by virtue of its commands cannot be considered immaterial. On this point we refer to the case above cited.

The returns do not show that a copy of the order was left with any one or posted, as required by section 198, in Sharp *vs.* Baird, 43 Cal., 577. The failure of the officer to show in his return compliance with this requirement was held to invalidate all the attachment proceedings and the deed resting on them was collaterally set aside.

Speaking of the duty of the sheriff, the court said: "It is his duty to state in his return what acts he performed in executing the writ in order that the court may be enabled to decide upon its sufficiency to constitute a valid service. We must assume, therefore, that in these returns the sheriff stated all he did towards making the service, and as these acts did not constitute a valid service there was no lien created by the attachments." See also Carlton *vs.* Ryerson, 59 Maine, 438.

The property is not described in the return as required by section 205. The inventory and appraisement is an entirely separate and distinct thing from the return "upon" the order and must be returned with the order. It is a general rule that an officer need not state in a return facts not necessary and proper to be set forth in such returns, and if he does state such facts the return is not evidence of them. The converse of this is also true and facts which must be evidenced by the return of an officer cannot be made to appear in any other manner. The facts set forth in the inventory and appraisement are foreign to the facts which the return itself must show.

The inventory and appraisement are separate documents from the returns and must speak for themselves. It is not lawful for the officer to attempt to make them part of that return which he is required to make "upon every order of attachment" and, consequently, the facts set out in them cannot in that way be evidenced as by a proper return. It would be too loose a practice to allow facts which must be stated in a return to be shown by a reference to some other document, made part of the return, which document sets out matter not proper to be stated in a return.

The return itself must state the specific facts, and not merely attempt to state them, by making other documents part of the return. The latter mode is not a compliance with the statute requiring the return to show, then, "upon the order itself." No ministerial officer can be allowed to set out jurisdictional facts by reference.

As stated in Tomlinson *vs.* Stiles, 5 Dutcher, 427, the object
293 of the inventory and appraisement is "that there may be no doubt of what property is attached," and making it does not excuse a specific description in the return also.

Drake on Attachment, sec. 205, says: "The return must state specifically what the officer has done." But here the returns prefer, which attempt, by reference, to make the inventory and appraisement part thereof, is not signed by the sheriff. It is, therefore, not

an official document and is powerless for any purpose. Blackwell on Tax Titles, at page 345, says: "The rule is well settled that every public document which is required by law to be executed by a public officer and preserved as a memorial of the facts recited in it must be verified by the official signature of the person who made it. The object of the rule is the identification of the document an an official act, executed by authority of law, and its spirit is answered only when the official character of the person making it is established and the document appears on its face to be an official act attested by the signature of the officer."

He proceeds to state at some length the reason of this rule, to which we desire to call attention. This rule ought to be applied with full rigor where the officer exercises a special statutory authority, the object of which is to divest title to property. To multiply authorities would be easy, but needless. The returns here shown do not appear to be official acts; they are not returns at all, and even if they were correct they would not be competent evidence to show an attachment lien until amended by adding the signature of the officer. They cannot make facts in other papers part thereof, because until signed they themselves are not returns; the signature to the inventory, etc., only purposes to authenticate that.

The affidavits do not aver that the claims are just. It is not denied that the affidavit is a jurisdictional prerequisite, but it is insisted that, the affidavits being amendable, the proceedings are not void, but irregular only, and not to be collaterally questioned. The claim of counsel is that the proceedings must be wholly a nullity in order to be questioned in the manner attempted. If it be meant that the proceedings must be defective in such particulars or to such extent that the defects cannot be waived or that consent cannot cure them, then we deny the correctness of the claim. It is useless to attempt to lay down any fixed rule or criterion to determine whether a mere proceeding is a mere nullity and incapable of being made good by anybody in any proceeding. As legal terms the words void and voidable cannot be said to have any precise signification. No broad, general rule or principle can be asserted by which to determine the effect in a particular proceeding of a given object in legal proceedings called in question. The only way to do is to examine the decisions in exactly similar cases. Here attachment proceedings are set up by plaintiffs as the foundation of a title which is asserted to lands to which the defendants claim title from the same source by proceedings long anterior in date to the proceedings and title of the plaintiffs. In such case we affirm that if the proceedings are erroneous only—that is, ordinarily capable of being vacated only by what is called a direct attack—we can show such fact and thus avoid them.

Drake says, section 84, that the affidavit must present a legal foundation for the issue of the writ, or the proceedings are void, unless the defect be waived or the affidavit is "amendable and be amended." The amendability of the writ is no criterion by means of which to determine whether the proceedings can be avoided or not when they are collaterally questioned.

In Whitney *vs.* Brunette, 15 Wis., 61, the sufficiency of proceedings were collaterally called in question where the affidavit omitted to aver that the debt was due, and that the sum claimed was correct
294 over and above all legal set-offs. Under the Wisconsin statute the issuing of the writ was a ministerial act. It was contended that the writ could not be amended, but the court said: "But a further answer is, that even if a void writ can be amended, yet no sufficient amend*end* was made. The writ itself was amended by inserting a return day and a direction to summon the defendants, but the amended writ was never served and no amendment at all was made to the affidavit. This, as I have already attempted to show, was so fatally defective as to render the writ void, and even if an amendment might relate back so as to help a service of property before the amendments, yet if such an amendment was not made the writ must remain void."

In Wilson *vs.* Arnold, 5 Michigan, 98, defendants in ejectment were allowed to impeach and overturn a deed because the affidavit had some defect as that shown in the case cited in 15 Wis., 61. It was said: "When the want of jurisdiction appears on the record of a court of general jurisdiction the record is a nullity and no rights can be acquired under it."

In Worthington *vs.* Clay, 1 Met. (Ky., 470), the omission to aver that the claim was just was said to make the writ wholly "unauthorized." A like omission in Tennessee was said to make the writ "void."

1 Heisk., 20. In the last two cases the question arose directly, but the language of the decisions is very broad.

In Dickinson *vs.* Cowley, 15 Kan., 269, it was said that an affidavit in the disjunctive was "fatal to the process and the jurisdiction." This case and Manley *vs.* Headley, 10 Kan., 80, show the stress laid upon a sufficient affidavit by our supreme court.

In Miller *vs.* Munson, 34 Wis., 579; 17 Am. Rep., 461, it was held in a collateral attack that an affidavit upon which perjury could not be assigned was fatally defective. True, these affidavits could have been amended; but, as was said in the Wisconsin case, no amendment has been made, and the proceedings cannot be upheld until that is done.

Under our statutes affidavits must show that the claim is "just." To show the amount plaintiff believes he ought to recover is not sufficient. It is a different thing, and no substitute for averments showing justness. The latter is a guarantee of good faith. We do not think the claims are shown to be just. They rather seem to be raked up to get a suit, and one of them, if our memory is not sorry, was barred by limitations.

Counsel say defendants cannot impeach the proceedings in attachment because strangers to them. We say that for that very reason we can, in a case like this, make any objection to them which Snyder himself could have made directly.

Smith *vs.* Saxton, 6 Pick. (Mass.), 483, was a real action. The defendant or plaintiff claimed under deed resting on attachment. The tenant or defendant was the grantee of the defendant in the attach-

ment proceedings. It was claimed that inasmuch as he was in privity with the defendant in attachment he was bound by the judgement against his grantor. It was replied that the defendant, being a stranger, could avoid the judgement collaterally by plea. The defect in the attachment proceeding urged was that the deputy sheriff levying the attachment had filled up the writ contrary to statute.

The court said that for that reason the defendant could defeat
295 the action. It was remarked: "Parties then so situated must have a right to question the validity of such attachments, and there is no other way of exercising that right than by showing the fact when the title founded on the attachment shall be set up against them."

In Downs *vs.* Fuller, 2 Met. (Mass.), 125, the rule is broadly laid down that any erroneous judgement may be impeached by a stranger to the record. The court said: "That a void judgement may be impeached by plea and proof is very clear; but the plaintiff's counsel contends that the judgement in his favor is not void, but is voidable only, and is valid until reversed by writ of error. It is generally true, no doubt, that an erroneous judgement is to be avoided only by a writ of error; but this rule of law does not apply to cases where a party has a right to impeach a judgement and yet has no right to reverse it by writ of error.

Although the judgement in favor of the plaintiff in the present case was not recovered by collusion with his debtor or with any fraudulent intention, yet we think the defendant has a right to avoid it in the same manner because he is neither party nor privy to the plaintiff's judgement and is not entitled by the rules of law to reverse it by a writ of error.

This ruling of law does not appear in every case to have been controverted, and it seems reasonable and just that where a judgement is recovered contrary to law and is prejudicial to a third party he should have a right to avoid it." A defective service was the objection made in that case.

In Leonard *vs.* Bryant, 11 Met., 370, the defendant in a writ of entry was allowed to impeach a judgement in which he was a stranger by showing defective service.

In Elose *vs.* Morton, 4 Cush. (Mass.), 27, which was a real action, defendant impeached a judgement to which he was a stranger by showing that in fact there was no jurisdiction. Shaw, C. J., said: "Being neither a party nor a privy to the judgement, he cannot have a writ of error to reverse it, although it may be erroneous and void, but when such judgement is set up collaterally to defeat the tenant's (defendant'-) title, which is otherwise good, and the tenant can show that the judgement is erroneous, either in matter of law or in fact, he may do so by proof."

Freeman lays down the same rule in his work on judgements, section 334 to 337, inclusive. In Simpson *vs.* Kimberlin, 12 Kan., 589, the right of a stranger to collaterally impeach a judgement is fully recognized.

By the cases above cited it will be noticed that the rights of a stranger to impeach a judgement enables him to reach defective

service, erroneous only. We need not show a defect of jurisdiction to invalidate plaintiffs' title, but only error of law or fact. When it is said in the cases that a stranger cannot impeach a judgement nothing more is in general meant than that he cannot avoid it by direct proceedings. True, in many cases a judgement is conclusive upon a stranger, and here if the defendants claimed under some title paramount and adverse to that of Snyder and derived from a different source it might well be that they would not be allowed to attack proceedings to divest his title unless they showed jurisdictional defects. But the defendants claim the title of Snyder by anterior proceedings.

When the proceedings upon which the title of plaintiffs rests were instituted the grantors of defendants claimed to hold Snyder's title. They might have been made parties to those proceedings, and now they will be prejudiced in "pre-existing rights." If they are not allowed to impeach that they may do so.

296 The affidavits for publication purport in the body to be sworn to in Kansas, but the jurat shows the officer administering the oaths was a notary public in Jackson county, Missouri.

In a case reported in 2 Day (Michigan), 498, all the proceedings in attachment were set aside on the ground that there was no affidavit; in fact, because a clerk in vacation administered the oath when he had no power to do so.

The same affidavits show only that the defendants had property in "the State of Kansas" subject to be appropriated to the judgement of their debts. The affidavits do not show that attachment proceedings were instituted. The clause of section 72 of Code, "or to be appropriated in any way," refers to the different proceedings from the provisional remedies. When one of the provisional remedies is resorted to the particular one ought to be shown by the affidavit. These affidavits did not show that the action was one against a non-resident having property "sought to be taken" by the provisional remedy of attachment, nor the affidavit show that the defendants had property within the jurisdiction of the court. See Repine *vs.* McPherson, 2 Kansas, 340.

The returns also show that the officer took possession of the real estate. An illegal and unlawful service of the writ creates no lien. (Drake on Attachments, see 194.) In 12 Pickering, 268, an attachment was held void where it was made after the officer broke the outer door to get the goods. It is well said in a case cited by plaintiff, Hardin *vs.* Tell, 51 Missouri, 241, that "in attachment causes the jurisdiction over any given subject-matter is obtained by the levy thereon of a writ properly issued." If there is no jurisdiction over the *res* the court cannot proceed, and no adjudication made is of any validity. The return of the officer is the sole evidence of the levy, and there is no jurisdiction over the *res* unless a valid service is shown. Such service does not appear in the causes in question, but, on the contrary, an illegal one. Here one of the very acts done by the officer to execute the writ and make an attachment was a gross trespass. It was not incidental merely to the making of the attachment, but was in part the very mode in which he

sought to attach the property. A legal lien cannot rest upon a grossly unlawful act. It is a lawful and not an unlawful service that creates a lien.

Possession.

IV.

Abandonment of title.

If leases can be used to show possession by either party, then surely the plaintiffs are beaten at their own game, for the lessees to George Altop and Mrs. Street cover all the time and all the land from 1877 until the time when these defendants took the title and took actual possession; see exhibits marked "J" and "K;" are as evidences of possession far superior to any leases introduced by the plaintiffs, and the evidence of Traber, Tourtelott, and Rhodie, witnesses for the plaintiffs, shows when Traber came around with his pretense of title that the lands were then occupied by all of the tenants whom they claimed to lease to, which belong to the lands not excepted in their petition.

As it has been before mentioned, the Rhodie lease and tract and the Honef lease and tract are excepted from the petition, and it is only the two remaining leases and tracts that are to be con-
297 sidered by the court, viz., the pretended lease to Jones and one to Taylor.

It is proven by these witnesses that Jones was on there at the time that Traber claimed he came around, in the fall of 1878, to see to things; but Tourtelott says that it was not until the spring of 1879 that he made any arrangement with Traber or got any possession. In this there is manifest contradiction, but it is proven also in the same connection that Jones was not on there in July, 1879, when Mason took possession. It is shown also that at the time Traber handed Jones this paper which he says he handed him—that at the time Jones claimed to be holding under some woman, presumably Mrs. Cobb or Mrs. Street.

Now, it is laid down as a well-settled principle of law that an attornment by a tenant without consent of the landlord is void.

Therefore it was impossible for Jones to accept a lease from Traber without the consent of the person under whom he claimed, and any attempt to do so would be a nullity; so it is of no importance how many papers Traber left with Jones, for Jones had no power to agree to hold under Traber, and it is not clear that he did attempt to do so. At all events, he soon after left the premises and did not abide his lease from Traber or pay any heed to it. Traber's rent was so reasonable that he certainly could not object to it. It was only to hold the fort and look after the property, and, what was very liberal and easy, it did not even specify how many times during the year he was to let his eye wander over the precious possession of the vaunted owner, and all for nothing—rent free.

What has been said of Jones can also be said of Taylor, as it would appear also that Traber found him there.

At most these pretended tenants only occupied very limited parts of the lands in dispute—Jones 25 x 54 feet on the easterly side of Wood street, just north of Rhodie's, at the point marked "B," and Taylor held 50 feet square on the westerly side of Wood street, just north of Honef's tract, at the point marked "C" in plat "D."

Neither actual nor constructive possession is conferred by purchase at sheriff's sale.

Beggs *vs.* Thompson, 2 Ohio, 95.

Whoever has the title to unoccupied lands is deemed in possession for all purposes *in* defense or protection of his rights.

81 Ills., 539; 24 Ills., 380; 17 Ills., 498; 32 Ills., 62.

The entry of the rightful owner on the possession of a wrong-doer in his absence is justifiable if no breach of the peace is committed.

Culver *vs.* Smart, 1 Ind., 65.

Presumption is against the actual possession of a person who has no title.

Wiggins *vs.* Holley, 11 Ind., 2.

The evidence clearly shows that the possession of the defendant was continued; that the grantors, Bartlett and Cobb, never abandoned their possession or title in favor of Trabor or any of his grantees or in favor of any person. Whatever doubts they may have had in regard to the validity of their title, one thing is certain: They never conceded anything to Traber, Norman, or the plaintiffs herein. Up to the time of the purchase by McAlpine they were, it seems, struggling to effect some kind of a compromise with Traber and Norman and the plaintiffs, but it did not succeed.

Now, Cobb and Bartlett might have well viewed their title in a doubtful way, considering the deed, commencing at the south-
298 west corner of the Joy tract, to wit, the deed marked Exhibit "E," under which the plaintiffs claim, for the deed does not certainly describe these lands, and it is very probable that this was the reason why they might have entertained doubts as to their title.

They never said aught that would prove that they had anything else upon which to hang a doubt. They never said a word conceding anything to Traber's title.

In one branch of defendants' theory they will take the ground that Cobb and Bartlett may well have doubted their title by reason of this misdescription in the four (4) acre deed, but they say at the same time that if Snyder did have any lands where they were platted to him in 1869, then defendants take that title under the bankrupt deed. If Snyder had nothin*f*, then these defendants take it under their deed from the widow and heirs of D. E. James.

Cobb and Bartlett did not abandon title or possession to Traber. Bartlett says they did not. Bartlett says that he did draw some redemption money deposited by Traber before he sold to McAlpine. Mason says he did not, but that he met him as he was going to draw it and tried to reason him out of the notion, but Bartlett would not pay any heed to him; that this was after McAlpine purchased, but

Bartlett says it is true about the not paying any heed, but not about drawing the money; but Albright, deputy treasurer, brings the record bearing the receipt signed by Bartlett and Downs in November following the June in which McAlpine bought, and swears that it is a correct record. McAlpine also swears that the date then mentioned is the date when the money is disbursed.

Sec-. 67, 71, chap. 25, Stat. 1868.

But Bartlett says he drew the money on another receipt bond and affidavit before that time, but no such record is shown or its absence accounted for by plaintiffs. One of the most familiar principles is that if there is a record it must be produced; see, therefore, Exhibits "N" and "O," defendants'.

But suppose that we let the verbal evidence on the one side balance that upon the other, then where does the record come in with its implication of absolute verity, and Albright with his official oath of duty, and McAlpine and the affidavit and bond—do they all speak falsely?

And now, suppose they all do, then what? Then, after all, have the plaintiffs an estoppel? No. The receipt money under the circumstances mentioned even before sale will not work an estoppel. It wouldn't work an estoppel against Bartlett and Cobb or anybody, for see Cooley on Taxation, page —, which cites Cooper *v.* Brashley, 72 Pennsylvania, 252.

If the purchaser has any other title or interest in the land besides that redeemed from it remains entirely unaffected; his acceptance of the redemption money cannot estop him from setting it up and relying upon it.

Bigelow on Estoppel, page xlv.

But defendants do not think that Traber made any redemption, as he really only paid part of the money necessary to redeem and by mistake of a county officer a portion was left out. There is always an equity to correct mistakes, and if it be a mistake, as mistake it was, Traber must tender the rest of the money, $235, before his redemption is of any avail. He knew, must have known, that $60 was not all the money he ought to pay to redeem those lands, but he took advantage of the mistake and omission of the treasurer.

It must have been knowingly, but knowingly or not the rule
299 is the same.

Another point hinted at by plaintiffs is that defendants paid no consideration for the land; that he was under obligations to pay the $90, and therefore he ought to be considered to have taken this title without paying any consideration therefor.

Well, we do not see the force of that, as a gift is good as against these plaintiffs, but perhaps it is ruled upon as another ground of abandonment.

Bartlett says McAlpine understood when he bought that Bartlett had doubts about his title.

McAlpine declares this is not true.

McAlpine was under no obligation personally to answer for that

$90. Bartlett's remedy was against the county in the first instance. McAlpine was only answerable to the county as an officer if he was guilty of misfeasance. The proposition then was to pay Bartlett and Cobb $90 out of his own pocket. The county should have looked to Traber for the rest of the money, or they should have taken steps to have cancelled the certificate of redemption.

Bartlett should have looked to the county; the county to Traber. There was no direct legal obligations on McAlpine to pay that $90. It was a clear case of bargain and sale for so much money. It is not by matters of opinion that title to land is conveyed.

If Bartlett and Cobb had really a title, though they did not know it, yet does any one suppose that on this bare matter of doubt and opinion, unaccompanied by any change of possession, Traber could have brought suit in specific performance and compelled Bartlett and Cobb to make a deed to Traber?

And if Traber could not enforce specific performance against Cobb and Bartlett on this ground, how could he recover an ejectment against these defendants without first suing in equity and getting a deed from McAlpine?

The doctrine contended for by the plaintiffs is absurd. The construction of a contract does not depend upon what either party thought.

77 N. C., 128.

V.

Bankrupt Proceedings.

Upon the final disposition of bankrupt proceedings in the United States courts the State courts cannot acquire jurisdiction to question the validity and acts of the United States courts.

Supreme Court of Iowa; 51 Iowa, 414.

In this case, as appears from the bankrupt records herein, pages 67, 80, 90, &c., the court found that the property mentioned in the schedule, pages 73, 77, &c., "belonged to the estate of the bankrupt."

The expression "estate of the bankrupt" means such property and rights of property of the bankrupt as the bankrupt act rests in the assignee.

2 B. R., 498.

That property was subsequently conveyed to Byron Judd under the orders of the said court, and the description in the deed
300 is the same as in the schedule, save that in the call for the northerly line of James street. In the schedule and orders of court we find in the deed the northwesterly line of James street.

The district court has equity powers in proceedings in bankruptcy and can by summary proceedings administer all the relief which a court of equity could administer under the like circumstances upon regular proceedings.

Diss. of Oregon, 1868, in R. Wallace Deady, 433.

It is more logical to construe 4972 throughout as giving the most ample powers to the district court to conduct and settle the proceedings in bankruptcy. Sherman *et al. v.* Bingham *et al.*, 5 B. R., 34; Jobliss *v.* Montague, 6 B. R., 509.

The assignee in bankruptcy takes by virtue of the assignments whatever rights the bankrupt could have asserted at the time.

14 B. R., 469; 15 B. R., 350.

Though the act provides that as soon as the assignee is appointed and qualified the judge or register shall by an instrument under his hand assign and convey all the estate, real and personal, of the bankrupt, yet this provision must be regarded as directory and not essential to the assignment where some equally formal mode has been adopted, sanctioned by the seal of the court, which imparts verity and gives authenticity to all judicial acts of the judge.

Zantziger *v.* Ribble, 2 Md. L. R., 281; S. C., 36; Md., 32.

There are three points relied upon by the plaintiffs in this cause as grounds for criticism of the title conveyed by the bankrupt deed in this case:

1st. Date of the 4-acre location.

2nd. Absence of assignment to Ess.

3rd. Description.

1st. That by reason of the fact that the deed of 1869 for 4 acres situated westerly of James street was dated in 1869 and the petition in bankruptcy was filed by Snyder in 1867 that therefore the property conveyed to Snyder was after-acquired and does not belong to the estate of the bankrupt.

That Joseph E. Snyder had rights in the said reserve dating from 1860 is shown by an overwhelming amount of testimony that can in no manner be successfully controverted. Plaintiffs have not in all their evidence attempted to deny this fact.

That these rights received their first, final, and only legal location by said deed of 1869 to Snyder for the four (4) acres upon which this land in question is located is also conclusively proven—that is, if it be established that the call for southwest corner meant north west corner in the four (4) acre deed mentioned. The carte-blanche deed, dated 1864, was but an attempt to locate the rights of Snyder.

It never received the ratification of David E. James, but, on the contrary, was repudiated by him, and by consent of Snyder and all parties interested the whole affair was set aside.

It is also shown that this four (4) acres was the final se-
301 quence, result, and settlement of the said equities dating from 1869, and that Snyder got no other lands than what he got from that single source.

Now, is it for one moment presumed that the assignee in bankruptcy did not take from Snyder that equity in 1860 by the assignment in 1867?

There can be no doubt but that the assignee in bankruptcy took whatever interest Snyder had in said reserve, whether the same was a vested, contingent, or undivided interest, and said assignee took

the same in precisely the same estate and with the like remedial power of enforcement as Snyder himself had or would have had if he had not gone into bankruptcy—no more, no less.

Now, when Snyder placed himself on the bankrupt record in 1867 by a statement under oath that he had no property except such as was exempt and deliberately concealed his equities in real estate, which he held in the name of his brother-in-law, Segar, there was nothing on record to show James F. Joy or the railroad company that he held any claim to any lands along the Missouri-river front or elsewhere at the hands of David E. James, and Joy bought of David E. James in 1868 without notice and as an innocent purchaser for value.

What did it avail Snyder that he had locked up in some secret drawer a carte-blanche deed, which he was expecting might be filled at some subsequent time?

That upon hearing from Dr. Wood that James had sold all his river frontage to Joy and given deeds therefor, he, Snyder, in contravention of the wishes of James and Dr. Wood, insisted on filling up said deeds and placing it upon the records of Wyandotte county.

Did he (Snyder) obtain any title thereby? Snyder had no authority to fill that deed with that specific six (6) acres of land or to insert his name in it as grantee in the absence of James.

If he ever had such authority or such authority could have been delegated by James to fill a deed in future in that manner that authority was certainly revoked by the action James took prior to the filling up of the same in conveying the land or making an arrangement to convey to Joy an appropriation of land to other purposes by the grantee of a power before execution of a power operates as a revocation of such power.

The placing it upon record was an absolute nullity, and it was out of the power of James to subsequently ratify such acts in contravention of the agreements he had made with Joy. Such deed could have no effect until it was filled out and recorded by authority.

Snyder had knowledge of the prior conveyance to Joy when he attempted to fill up such deed. The filling it up was equivalent to the making of a new deed so far as the registration law is concerned.

And Snyder gained nothing because he filed it for record prior to the record of Joy's deed, for actual notice is equivalent to record, and Snyder had actual notice of Joy's title.

But the filling up of the deed was a mistake on the part of Snyder. At the time that he attempted to fill it two acres of the six (6) acres description had been washed into the river, as is shown by the evidence of Dr. Wood. See page 19, Stenographer's Report.

302 Two acres more had passed to James F. Joy by a title which Snyder had no power to defeat, leaving only two acres to which Snyder could have any claim of title, and that, too, only of a three-eighths (3/8) interest therein, since if the quitclaim could have any effect at all it could only take effect from its date—1864—

at which time James only had a $\frac{3}{8}$ interest in such land and could not convey. D. E. James afterwards acquired title therein under the partition of 1867.

Then Snyder would have got in such land only $\frac{3}{8}$ of two acres if the deed mentioned had been valid, but it appears by the mortgage of James to Armstrong (see Exhibit X, page —) that even these two acres was subject to a mortgage of $50 per acre, which would reduce Snyder's supposed river location to almost nothing, and the idea that this shall stand and obtain in preference to the subsequent, real, actual, and ratified location in furtherance of common sense, justice, and equity to all parties is absurd and inconsistent.

Even D. E. James could not take this advantage of Snyder or of his assignee in bankruptcy, to whom these rights had passed.

The fact that this final location of four (4) acres was made to Snyder after Snyder had gone into bankruptcy will make no difference.

Snyder, it appears, obtained his discharge in bankruptcy in 1868, after the Joy purchase and this attempted location. Cancellation of said location on the records and a final compromise of his original rights of 1860 were all made in the interim between his discharge and the setting aside of said discharge in 1870.

It may be a question of some importance to ascertain and determine what is the status of a bankrupt at such a time during this interim and how far his acts in regard to his property will be treated as valid.

His attitude is that of a discharged bankrupt, subject, however, to a re-cis-ion of such order. His condition cannot be far different in its general analogies to that of an insolvent a few months before bankruptcy, and if he intermeddles with the estate and makes any exchange, as in this case, or any arrangement to enhance or better the condition of his estate the assignee and creditors have an election either to proceed to set aside *aside* such transfer, arrangement, or compromise, or they may, if they choose, elect to accept and ratify such exchange, and in such case are entitled to the benefits accruing from such exchange.

Now, it cannot be denied that the receipt of four (4) acres of land in lieu of $\frac{3}{8}$ of two acres, as above mentioned, was an advantageous arrangement to make and cannot be considered necessarily in fraud of creditors and therefore void.

In support of this doctrine, — 18 Wallace, 332; Cook *vs.* Tullis, 1 Dil., 164; 15 Wal., 410; 2 B. R., 316; 7 B. R., 45; 3 B. R., 71; 47 N. Y., 261.

The assignee represents the rights of the creditors as well as the rights of the bankrupt, and any lien or incumbrance which would be void for fraud as against creditors, if no petition had been filed or assignee appointed, will be equally void as against the general creditors represented by the assignee. He may contest the validity of the conveyance, although the bankrupt could not.

303 That is what the act means when it vests in the assignee all the property conveyed in fraud of creditors. It does not make any conveyance or incumbrance fraudulent.

It simply clothes the assignee with the entire title, notwithstanding such conveyance or incumbrance, and makes it his duty to invoke the proper jurisdiction to annul the fraudulent proceedings.

After proceedings in bankruptcy the assignee is the only person who can bring the action. *In re* Nyne, 4 B. R., 23; Bradshaw *vs.* Klein, 1 B. R., 542; *In re* Metzger, 2 B. R., 355; *In re* Meyers, 1 B. R, 581.

If the assignee refuses to institute proceedings to set aside a fraudulent conveyance any creditor who has proved his debt has a right to apply to the court for an order directing proceeding for that purpose to be instituted upon such terms as shall be right.

Freelander *v.* Hollman, 9 B. R., 331; Allen *v.* Montgomery, 48 Miss., 101.

The creditors as beneficiaries are proper, though not necessary, parties.

Boone *v.* Hall, 7 Bush.; 1 Dill., 85.

It thus enables the assignee to ratify and confirm the sale, prevents litigation, and at the same time fully secures the rights of the creditor.

He may release or quitclaim to the purchaser his interest as assignee so as effectually to cure any defects there might be in the title by reason of the proceedings in bankruptcy and the assignment to him.

Winslow *v.* Clark, S. C., 47 N. Y., 261.

The Federal courts have exclusive jurisdiction of a claim by an assignee in bankruptcy to avoid a conveyance of assets made by the debtor on the ground that it was made in fraud of the bankrupt law.

Until a judgment of the Federal court annulling the conveyance has been obtained the court of Wisconsin will not adjudge it void for that reason. 1876; Bromley *v.* Goodrich, 40 Wis., 131.

It does not necessarily follow that because Snyder received a deed of four acres of land in 1869 that this was the first origin of such title, it was simply the location of a right that had existed a long time prior thereto, and if the conveyance then was made to Snyder, during the interim between his discharge and its revocation, the subsequent revocation of such discharge made Snyder a trustee for the assignee by implication of law and the location to the name of Snyder was in its effect the same as if it had been made to the assignee; the right had passed to the assignee a long time before the location.

That the bankrupt is the trustee for the assignee see *In re* Morse, 7 B. R., 56; 2 B. R., 591; see, also, 1873, Beecher *v.* Gillespie, 6 Ben., 356, and March *v.* Heaton, 1 Low, 278; 7 Bush. (Ky.), 66.

Another question that may be considered in this connection is the jurisdiction of the court of the *res* and of the person of the bankrupt and his privies in estate, his assignee and creditors.

The bankrupt proceedings are essentially *in rem* and are analogous to proceedings in probate matters.

304 The moment the petition is filed the bankrupt is civilly dead. During the interval existing between the filing of the petition and the appointment of the assignee a condition of things exists not unlike that in the case of a person dying intestate and before the appointment of an administrator. On the death of the person intestate no one is authorized to dispose of or assign his assets. A bankrupt is *civiliter mortumus* from the day on which he files his petition, and during the interval between the filing of his petition and the appointment of the assignee no assignment of his assets can be made.

Johnson *v.* Geisriter, 26 Ark., 44; Baron *v.* Newberry, 1 Biss., 149; 2 Ware, 330.

If, then, the assignee occupies a position in regard to the estate of the bankrupt analogous and corresponding to the attitude of an administrator toward the estate of a deceased person, then the decisions under probate proceedings in their general analogous will be found applicable to bankrupt proceedings.

But here in this case in bankruptcy it is something more than a proceeding *in rem*, for the bankrupt court has also jurisdiction of the bankrupt, the assignee, and creditors.

11 B. R., 125; S. C., 20 Minn., 81; Phillips *v.* Selick, 8 B. R., 390; 12 B. R., 508; 11 B. R., 149.

In rem. Upon a proceeding *in personam* where there are adverse parties the jurisdiction of the court depends upon its power over the subject-matter and the parties.

Where the proceedings are *in rem* the jurisdiction of the court depends upon its power over the thing, the subject that is before them, without regard to the person who may have an interest in it. All the world are parties.

Of this nature is a proceedings before a competent court to sell the real estate of an indebted estate. The administrator represents the land. All parties claiming under the intestate are parties. The action of the court operates on the estate, not on the heirs of the intestate, and the purchaser obtains not their title, but one paramount.

Supreme Court, 1843; Grignon *v.* Aster, 2 How., 319; see, also, Beauregard *v.* New Orleans, 18 How., 497.

And where a court has jurisdiction it has a right to decide every question which occurs in the cause, and whether its decisions be correct or otherwise its judgement, until reversed, is binding in every other court.

1 Pet., 328; 10 Nev., 47.

The bankrupt court can, by way of direction, decide any question of legal or equitable right which can be contentiously discussed by opposing interests.

In re Franklin Savings Fund Society, 31 Leg. Int., 173; 7 B. R., 193; also see Bump on Bankruptcy, late edition, title Jurisdiction, &c.

"When Congress delegated to the district courts the equitable jurisdiction in bankruptcy over the property of the debtor it, by necessary implication, also delegated the power to administer such remedies known to the law as are absolutely indispensable to the complete exercise of the jurisdiction expressly conferred. One power directly given is the power to collect all assets. The means by which this result is to be reached are not enumerated, but the power to accomplish the result is given and the right to employ the proper legal process for effecting the result must follow by necessary implication. The district court is clothed at once in voluntary cases with jurisdiction over the debtor and his prop-
305 erty.

In re Mallory, 6 B. R., 22; *In re* Lady Bryan Mining Co., 6 B. R., 252, Samson *v.* Clark, 6 B. R., 402; S. C., 9 Blatch., 372; *In re* Ulrich *et al.*, 8 B. R., 15; 7 ed. Bump on Bankruptcy, pages 304, 305; 36 Mich., 453.

Now, the vital point in this matter is whether the Federal court had the jurisdiction; unquestionably the court in this case had the jurisdiction of Snyder, the bankrupt. He was duly before the court under the proper process, and through him as a party to the proceedings the court could enforce any order necessary to be made to subject his property to the payment of the bankrupt creditors, whether in or out of the district. 7 Blatch., 170; 14 B. R., 388; People *v.* Breman, 12 B. R., 567; S. C., 6 N. Y., 120; 1st Sch. Ref, 597.

The jurisdiction does not stop at State lines. Markson *et al. vs.* Henney, 4 B. R., 510; sec. 1 Dillon, 497.

But it had even more than this. It had jurisdiction of the *res* through the possession of the assignee. The *res* was under the control of the court in the accepted construction of the bankrupt law.

In order to have that jurisdiction it was necessary that the property described in the schedule, order of sale, and bankrupt deed should "belong to the estate of the bankrupt." In order that it should "belong to the estate of the bankrupt" it must have been property to which the bankrupt had some possible right or equity before the filing of the petition.

It need not have been absolutely located when the petition was filed, but it might have been any kind of a possible contingent, expectant, or unlocated or undivided interest, such as the debtor might have sold, assigned, or parted with. It must have been an interest capable of sale and transfer.

There can be no doubt but that Snyder's rights, dating from 1860, were of the nature which, in law and equity, were assignable. Then as a matter of course such interest passed to the assignee in bankruptcy, and if they have never passed out of the assignee by any proper conveyance, then they remain still in the assignee, and any irregularity, mistake, or alleged misde-cription in the bankrupt deed cannot redound to the benefits of the plaintiffs herein, and in no view of the case does it give them any title.

But we are by no means compelled to stand on this ground, for the bankrupt court did have jurisdiction to find the fact—the fact

of its own jurisdiction and of the jurisdictional facts necessary to confer upon it jurisdiction and incidentally, if it were necessary, when the property did in its true interpretation belong to Snyder, whether he had such right in 1860, 1867, or 1869. The court must certainly have the jurisdiction to classify the property and decide the question whether or not certain property belonged to the bankrupt estate or to the private estate of Snyder. To deny this jurisdiction would deprive the court of all jurisdiction over the property, for to say that the court shall have power over the property of the bankrupt and yet at the time assert that the court shall have no jurisdiction to decide what is the property of the bankrupt would lead us to another absurdity.

Irvin *vs.* Scribner, 18 Cal., 499. A decree is presumed to be rendered upon its merits. 7 Wal., 107; 8 How., 495.

And a court is presumed to have found all the incidental and primary facts upon which the ultimate fact naturally depends.

306 2nd. There is one point in this bankrupt proceedings upon which the plaintiffs seem to rely with considerable confidence, and that is the absence, as they claim, of a formal instrument of assignment from Samuel A. Vose to Henry N. Ess, his successor now.

Section 400 of the Revised Statutes under civil procedure provides for cases of this kind for courts of this State, and there is no doubt but the rule ought to apply to this case, although it is a court of the United States whose decree is by law made operative in this State. But aside from all this it is a general principle of equity that what is ordered done by the court of competent jurisdiction is in general considered as done.

The law does not, in its true interpretation, require in the case of an assignee in bankruptcy who has been duly appointed that a formal instrument of assignment is necessary, for according to sec. No. 18 of the bankrupt law it appears that when the number of assignees has become lessened by resignation or other cause the court has power to fill the vacancy, and the newly appointed assignee becomes vested with all the rights and trusts of the outgoing assignee, and this by mere operation of law.

See Bump on Bankruptcy, last ed., and notes and authorities there cited.

So, when an assignee has once been regularly appointed and a formal instrument has been made to him by the court or the registrar in bankruptcy, he becomes for the purposes of that case an officer of the court and a trustee for all parties interested in the bankrupt estate, and if he dies or resigns or for any other cause the court may appoint his successor, who, without any formal instrument of assignment from the old assignee, becomes vested with the estate.

This doctrine applies to the officers and agents of corporate bodies, private and municipal; it applies to courts and to probate matters, and is a well-understood doctrine of equity law not to be denied. But if the title still remains in the old assignee, Samuel A. Vose, it

does not help plaintiffs any, as they must recover, if at all, on their own title.

No. 90 Bankruptcy; U. S. Dig., 1373, requisites of assignment.

"The provisions of sec. 14 of the act of 1867 that the judge shall convey and assign the bankrupt property to the assignee by an instrument under his hand" is merely directory; therefore the signature of the judge is not essential to the validity of the conveyance. Yet this provision must be regarded as directory and not essential to the assignment where some equally formal mode has been adopted, sanctioned by the seal of the court, which imparts verity and gives authenticity to all judicial acts of the judge.

Zantzger *vs.* Ribble, 2 Md., L. R., 281; S. C., 36 Md., 32.

This ruling applies to the first assignment from court to the original assignee. *A fortiori* there is still less reason in supposing that it was necessary in the case at bar, where, under the doctrine of trusts, a trustee once having been appointed and duly clothed with his trust, the court has jurisdiction to remove him and appoint another, or on resignation or death the court has sufficient power to appoint his successor.

That the assignee is a trustee and becomes such by virtue of his appointment. See *In re* Morse, 7 B. R. 56; 2 B. R., 591.

307 Property not in the district also vests in the assignee. 12 B. R., 486. Registration laws need not to be complied with. 26 N. J., 202; *In re* Neal, 3 B. R., 177.

The third point in plaintiffs' — has been answered under "matters of description."

VI.

Res adjudicata.

As has been above shown, the court found that the property described in the schedule, order of sale, bankrupt deed, and other formal papers—see page of Bankrupt Record 73–90—"belonged to the estate of the bankrupt."

Defendants take the ground that such finding and subsequent action of the court therein are final and conclusive in other courts and that such proceedings cannot be collaterally attacked.

That the bankrupt court is a court of enlarged and ample jurisdiction and has exclusive control of the bankrupt and of his property and with all questions and controversies connected therewith.

See Bump on Bankruptcy, latest edition, subject Jurisdiction.

The judgement of a court having jurisdiction is not rendered void or open to collateral attack because of wrongful judgement

based upon erroneous application of legal principles or insufficient evidence.

Stephenson *v.* Bonesteel, 30 Iowa, 286; 49 Mo., 361; McGovern *v.* Scales, 9 Wal., 23. Such judgements bind parties and privies. 26 Wis. But the judgement in this case is not wrongful, but is just what its merits would require.

An estoppel of record exists and the judgement and action of the court form a barrier against the encroachments of any court of collateral jurisdiction.

When the proceedings of a court of competent jurisdiction are brought before another court collaterally, they are not subject to all the exceptions which might be taken to them on a direct appeal.

The general and well-settled rule in such cases is that when the proceedings are collaterally drawn in question and it appears on the face of them that the subject-matter was within the jurisdiction of the court they are voidable only.

The errors and irregularities of any suit are to be corrected by some direct proceedings either before the same court to set them aside or in an appellate court. Supreme Court, Thompson *v.* Toline 2 Pet., 157; Wilcox *v.* Jackson, 13 Pet., 498; U. S. *v.* Arredondo, 6 Pet., 691; Voorhoes *v.* Bank U. S., 10 Pet., 473; Cook *v.* Halsey, 16 Pet., 71; Hickey *v.* Stewart, 3 How., 750; Sumner *v.* Moore, 2 McLean, 59; 72 N. Y., 217; 21 Kan., 181.

A sale of lands regularly made under judgement of a court of record valid upon its face is valid, and a subsequent reversal of the judgement on appeal will not defeat the title acquired by a stranger through such sale. 9 Circ. (Cal.), 1870; Galpin *v.* Page, 1 Sawyer, 309; 14 B. R., 71; 1 Wal., 627; 9 Wall., 116; 6 Wal., 116; 9 Wal., 23; 12 Pep., 11, 449.

The general impression from all cases on this head is that
308 the purchaser has a right to presume that the court has taken the steps necessary to investigate the rights of the parties, and that it has on investigation properly decreed a sale—1 Sch. and Lef., 597; 10 Pet., 449; 3 Pet., 431; 11 Wal., 268; 2 Pet., 157; 10 Wal., 308—conclusive as to title and boundaries. 1 Wal., 439; 2 Wal., 444; Bigelow, Estoppel, 160, 161.

If the carte-blanche deed, in its inception or after it was filled up by Snyder by a mistaken description, was an error, an equity would have arisen in favor of Snyder, his assignee and creditors, to proceed in equity to have the same set aside and compel James to give them other lands of equal value, and such right to bring such action would have passed to the assignee in bankruptcy by the virtue of the assignment; the assignee could have enforced such an equity. Therefore James, in making final compromise of 1869, did no more than equity would have compelled him to do at the suit of the assignee. James, however, did this voluntarily, and the court, the assignee, Snyder, and the creditors ratified it, and now it is not for these plaintiffs, who procured this to be done or set the train of circumstances in motion by which it was done, to be heard to question it.

It is of no moment whether in this petition to set aside the bankrupt discharge Norman, the grantor of these plaintiffs, asked specifically that this particular property mentioned and described in the bankrupt deed should be subjected to his Jaccard claim.

The prayer of his petition asked for general relief, and *and* it is no objection to the proceedings that the assignee in bankruptcy, under the approval of the court, ascertained that there was other property than that mentioned in the said petition, and under orders of the court scheduled it, and Norman, continuing still to be a party to the record, accepted and ratified the action of the assignee and court and participated in the benefits growing out of this newly found property.

It makes no difference that the court took a different view of the matter from that of Mr. Norman and after judicially investigating all the features of this case made a finding in favor of Mr. Norman on his general prayer and rejected his special prayer.

The construction of the bankrupt court is not like any other court in these matters; it has an exceptional, supplemental, and summary jurisdiction, which enables it to use all needful and efficient means to disclose and subject the property of the bankrupt to the creditors.

Estoppel in Pais.

VII.

We have already shown that the plaintiffs are estopped from claiming this land by the finding of the district court of the United States upon this question of what property "belonged to the estate of the bankrupt, Snyder."

We now propose to show that not only this but the plaintiffs are estopped by matter outside of this finding or matters "*in pais.*"

Estoppels bind both parties and privies.

Now, Norman acted by himself and as trustee for Traber in the bankrupt suit, and Traber acted for himself and as trustee for Norman in the attachment suits. All these matters suffi-
309 ciently appear from the record. Norman and Traber were then parties to the record in both cases.

Tourtelott says in his evidence that he had notice when he bought that Cobb and Bartlett had made a claim to the land that was sufficient to put him on his notice of everything connected therewith and of all the equities of the defendants.

In general, a party in possession of certain information will be charg-able with a knowledge of all facts which an inquiry suggested by such information prosecuted with due diligence would have disclosed to him.

15 N. Y., 354; 23 N. Y., 252; 24 Ind., 429; 8 Conn., 389; 3 N. J. Eq. (2 Gr.), 36; 4 Blackf. (Ind.), 333; 1868, Wilson *v.* Hunter, 30 Ind., 466; 1 Dak. Ter., 387.

The bankrupt deed and chain of title was on record when Tourtelott bought and gave constructive notice also. Tourtelott

could then gain nothing which his grantees could not gain, as he was a purchaser with notice of equities.

Traber and Norman prosecuted in the bankrupt court to subject this property to their Jaccard claim for $5,000 which they owned jointly. They remained parties to the record to the final end of the proceedings. It makes no difference that they sold out their claim to anybody else just before the money was paid over. Their names were on the records and they allowed them to remain there as the prosecuting parties to the end, and they are parties to the record and are therefore bound by all the proceedings to which they were parties or participated in. If they did not receive the full $5,000 that Byron Judd paid for that land, they at least endorsed the transaction and stood by and induced the sale. This was 1871.

Now, in 1874 we see these same gentlemen in control of another batch of obsolete claims, contending that this title which they induced to be made to Byron Judd in 1871 and for which they participated largely in the benefits—that this sale made at their suit and upon their application is good for nothing. But they say that they played it fine on Cobb and Bartlett and sold out for $1,500, just before the money came to hand.

They again, in 1864, go through the forms of judicial proceedings and obtain sheriff's deeds under the claims of Segar and Welland, whose claims the evidence and record shows they really owned or had such control of that the shares coming to Segar and Welland were only secondary matters.

Well, now, after they have cooked up this dish they sell it to Tourtelott and Allcutt, so they say, with notice to the purchasers that Cobb and Bartlett claim title.

It is time to pause and take breath, for these are magnificent transactions.

Not only are the plaintiffs estopped, but so likewise are Segar and Welland; they are all either parties or privies; and especially is Segar estopped, for he was the brother-in-law and trustee of Snyder, the bankrupt, and helped him to conceal his assets and was more or less cognizant of all his frauds and of all the proceedings in bankruptcy, as will be seen by examining his deposition and the title bond of 1860, and he is the last man who could open his mouth now to question the title that his attorneys and coworkers, Traber and Norman, had committed themselves to. It is presumed also that Welland was no less the tool of Traber and Norman, and the record also showed that he too was a relative of Segar's at one time and was intimate with Snyder. Norman and Traber get the
310 whole thing by simply paying Segar $50. (See deposition of Segar.)

> For ways that are dark
> And tricks that are vain.

Even if Snyder himself were to ask at this time (putting the bankrupt proceedings out of the question) that he should be remanded to his river frontage, would Joy and the St. Joe and Hannibal Railroad Company or the Fowler Packing-House Company,

who now occupy these lands, be decreed to yield up possession to these river-frontage lands the six acres mentioned in his deed of 1884? Could such a decree be granted after the final compromise of 1864? Of course not. Yet the plaintiffs are insisting that the six acres by the river is what our bankrupt deed covers—that those are Snyder's lands. Yet they ask for what Snyder himself could not ask or possibly obtain.

Election.

VIII.

Election as applied to this case is based upon facts as follows:

That in 1864 Snyder received a carte-blanche deed, which he filled in 1868, with a specific six (6) acres of land, in James' absence.

That after he had gone into bankruptcy and after he had received his discharge and in the interim between the order of discharge and the setting aside of this order, in 1879, he attempted to cancel the attempted location of said six (6) acres, and to that end conveyed back to James by the same identical description dated 1869, and thereupon, in exchange for such deed and the contemporaneous satisfaction of the title bond of 1860 by Segar, Snyder received and accepted a deed to four (4) acres of land westerly of James street, which covers the land in controversy, the last-named deed being a warranty deed and the deed dated 1864 a quitclaim.

Now, defendants claim that Snyder and his assignee, so far as general creditors are concerned, such as Segar and Welland, who did not prove up their claims under the bankruptcy, elected when he made this exchange to give up all right to this for river-frontage lands and accepted and agreed to abide by the warranty deed of 1869 for four (4) acres in full settlement of his original and all prior rights, and that such election binds parties and privies and will bind all general creditors who were not proving up their claims and bound all the bankrupt creditors who did prove up their claims, if they elected to ratify the same.

But the plaintiff assumes this theory: That the discharge in bankruptcy having been set aside, the assignee, without exercising his right of election to declare the deed from Snyder to James of 1869 void under orders of the court, proceeded to sell the newly described property, together with two (2) acres, a portion of the old described six (6) acres, making six (6) acres in the bankrupt sale.

It is claimed by plaintiffs that a right of election belonged to the assignee to elect to proceed against the first description or the last description—

The basis of the theory being that the transaction was an exchange, and that the four acres was given to Snyder in lieu of the six acres promised, and that by law the assignee had a right to declare such exchange void at his election and be remanded to the description in the deed dated 1864—

311 Which if he elected to do, plaintiffs' claim would necessarily release his hold on so much of the newly described

property of 1869 as was not contained in the first description of the deed dated 1864.

We do not believe that the assignee had any such election. He certainly could not elect to take what Snyder could not have obtained himself, and the river had taken two acres and Joy and the railroad company two (2) more, and there was only, as we have said, three-eighths ($\frac{3}{8}$) of two (2) acres incumbered with a mortgage of fifty dollars ($50.00) per acre left of the original six (6) acres, and D. E. James had that by a title that Snyder could not have defeated if there had been no bankruptcy.

See 14 B. R., 469, and 15 B. R., 350. So then it seems to us the assignee had no right to elect to take property which the bankrupt never had and never could have established a title to; but, according to their theory, the assignee made no such election, yet passed that right of election to Byron Judd, the purchaser; that Judd, the purchaser, passed that right of election to Cobb and Bartlett, and that Cobb and Bartlett exercised that right of election when they made a deed to Joy of the two acres of the six (6) to the Hannibal and St. Joseph Railroad Company in September, 1872, and received therefor $850 for such deed, and now plaintiffs say they and their grantors are estopped to deny that they owned the two acres thus deeded.

We know of no law against a man giving a deed to property that he does not own and getting what he can for it, whether he has any real title to it or not; and if he is aware that his grantee has the title already he can safely give covenants of warranty.

We do not understand that he thereby gives up or is estopped from claiming any other lands which he does own and to which he has a good title.

But proceeding on the basis that the transaction of 1869 between James and Snyder was purely a matter of settlement and exchange of one piece of land for another, and supposing, for argument, that by the election of 1872 by Cobb and Bartlett the attempted transfer of six acres near the river for four acres overlapping further west was declared and was thereby rendered void, the question arises—

1st. If persons representing the rights of Snyder, viz., Cobb and Bartlett, elect to abide by the eastern description and hold title thereto do they not at the same time release their hold of the two acres overlap farther west? See plat "C"—in plaintiffs' case the land claimed being the western overlap upon which plaintiffs say the lands in controversy are located.

2nd. To whom does that two acres overlap go? It cannot go to Snyder, as neither Snyder nor his representatives can be remanded to their eastern frontage by the river and still retain their western overlap? They cannot, under this equitable doctrine of election, keep the thing and the consideration paid for it also. If they abide by the one they must *do* elect to release the other.

Now, D. E. James was the party who paid the consideration in such exchange. He gave the four acres for Snyder's claims to the river-frontage lands.

Now, if the sale of 1872 to the Hannibal and St. Joseph Railroad

312 Company was an election, as above mentioned, D. E. James having given his warranty deed for this eastern frontage to James F. Joy, agent of said railroad company, previous to 1869, it follows that James was bound to make that title good and bound in equity to answer all damages on failure of such title and to pay all sums of money to said company which they in good faith necessarily had to expend in buying any outstanding title belonging to the estate of the bankrupt Snyder. A liability therefore, arises against James for the $850 and interest, the purchase price of said land by the railroad company from Cobb and Bartlett, who had elected, as plaintiffs will hold, to declare the exchange of 1869 as void.

That therefore by said election it must follow that the consideration on the overlap of two acres to the west falls back to none other than him from whom it originally came, viz., to D. E. James, as the exchange, according to the theory, stands rescinded. This will not do, for it leads plaintiffs to the fact that the title to this two acres overlap to the west is in D. E. James or his widow and heirs, from whom the defendants take the title by deed of conveyance.

And it makes no difference for the purpose of this suit that plaintiffs endeavored to prevent this deed from being given in evidence on the grounds of its being an after-acquired title. It shows an outstanding title and defeats the plaintiffs in any view of the case.

It further appears that if James, as it seems was the case, was compelled by force of circumstances over, perhaps, which he had no control to defeat Snyder's claims to river-frontage lands and had placed it out of his power by his agreements with Joy and the railroad company to comply with his verbal agreement to Snyder of 1863 or 1864, an equity would immediately arise in favor of Snyder to have other land of equal value set out to him by James. This James complied with, and in so doing benefitted the estate of Snyder and gave Snyder four (4) acres instead of the very extremely doubtful and complicated claims of Snyder on the river bank, and Snyder had no cause to complain, nor had the assignee or his creditors, for it is laid down by good authority that a bankrupt can interfere to preserve or better the condition of his estate subject to the ratification of the assignee.

9 B. R., 433; 18 Wall., 332; 1 Dill, 164; 15 Wall., 410.

Ratifications.

IX.

Plaintiffs claim that James ratified the blank deed after it was filled up by Snyder with the six acres, and that the words and language employed by the scrivener in drafting a release showing satisfaction or title bond are conclusive.

The defendants claim that the purpose of James and Snyder in releasing and quitclaiming respectively was just the reverse of a ratification of the attempted conveyance of the six acres which was

filled in the deed by Snyder not only in the absence and without the knowledge, but against the wishes of James; that the purpose was an agreed and express disaffirmance of the unauthorized act of Snyder in putting land in the deed which James then did not own, had conveyed before then to Joy by deed held in escrow.

The court will look not alone to words, but all the facts and attending circumstances, to ascertain the intention of the parties.

The instrument referred to as the satisfaction is hereto at-
313 tached and marked Exhibit "U." It had no attachments when recorded except that it accompanied the quitclaim deed made by Snyder, April 12, 1869, back to James, and bears record on the same day and filed at the same moment. The satisfaction was recorded on page 207 and the quitclaim deed on page 208 in Book "M" of the records of said county.

These two instruments show but one object, viz., a purpose on the part of Snyder and his trustee, Segar, to clear the records in favor of James—that is, to satisfy the title bond of 1860 and to cancel the attempted location of the six acres under the quitclaim deed of 1864, in order to remove any cloud that might exist against the two acres sold to Joy, and at the same moment that Snyder delivered the two instruments to James Snyder received from James the warranty deed to four acres of land westerly of James street as a consideration for said conveyance and release.

If James had made Segar state in that satisfaction that in consideration of one dollar he released, &c., and then Snyder had made a deed back to James and James had deeded the four-acre location to Snyder as before, plaintiffs would have said that the four-acre location was a new purchase with as much consistency as now.

It is not the forms with which transactions are clothed that govern, but courts look to the substance of the contract and to the ultimate result aimed at by the parties. James plainly says in this transaction, I will give you a warranty deed of the four-acre location of land westerly of James street if you will quitclaim to clear the records of your attempted location of six acres in my absence and enter satisfaction in full of your title bond, and it makes no difference what the consideration mentioned for that satisfaction was, whether the six-acre location, one dollar, or the four-acre location; it is all one and the same result.

The gist of the matter is, what did the parties mean to do? The fictitious recital of a consideration in a written instrument is always disputable; but suppose that the location of 1864 were ratified as the plaintiffs claim, it can make no difference so long as the proof shows that it was an exchange and the assignee in bankruptcy ratified that exchange by selling the four-acre location with the approval of the court.

An agreement which is *per se* to extinguish an existing debt operates as an immediate satisfaction of the debt; otherwise as to an agreement whose performance is to have that effect. White *vs.* Gray, 68 Me., 579; U. S. Dig., 1879.

James located 4 acres to Snyder as a consideration for the six, as a consideration for the ten under the title bond.

The literal language of the release must be construed or may be wholly disproved, as it was in this case by both the evidence of Wood and Segar and the record.

Parol evidence is admissible to show the intent of the parties to an instrument purporting to be a defeasance.

Walker *vs.* McDonald, 49 Tex., 458; 1879, U. S. Dig., 288 F.

The consideration clause in a deed is open to explanation.

Hannibal & St. Joseph R. R. Co. *vs.* Green, 68 Mo., 169; Obringer *vs.* Capeheart, *id.*, 441; Holmes' Appeal, 79 Pa. St., 279.

The satisfaction and conveyance back taken together
314 formed the consideration for the four-acre location of 1869, and the ratification of the deed of 1864 was, in view of all the features of the case, a legal impossibility; and if Segar stated in terms that the title bond was satisfied it is referable to the whole of the contemporaneous transactions; although the consideration of the satisfaction may be erroneously stated if the fiction of one dollar had been stated, still the satisfaction would have been referable to the entire transaction and the real consideration might have been proven.

The instrument locating four acres, the conveyance back to James, the satisfaction of the title bond, and any language in the satisfaction which refers to the quitclaim of 1864 as a consideration are all to be construed as one instrument and read as evidence of one transaction. When mutual deeds are made between parties at the same time and in execution of the same contract they may, for the purpose of determining the intention of the parties and correcting errors, omissions, or mistakes in either, be regarded as a single transaction.

Smith *vs.* Taupen, 20 O. S., 478; 14 O. S., 339; 9 Con., 274; 10 Pick., 302; *id.*, 250; 5 Pick., 395; 9 Dana, 209; 67 N. Y., 338; 4 Ben., 42; 11 Vernon, 221; 6 N. H., 401; 2 Ark., 204; 15 Vernon, 672; 1 Cush., 16; 8 Ala., 375; 9 Ala., 24; 4 Scam., 561; 4 Met., 231; 4 Black., 341; 5 Black., 536; 6 Black., 113; 4 Black., 628; 3 Neb., 285; 35 N. Y., 25.

But say that James ratified or attempted to ratify the filling up of the carte-blanche deed after he returned from Michigan, and he did all he could to do so, and to make it as strong as possible he had the satisfaction of the title bond so written that it should refer to the carte-blanche deed of 1864.

Now, in what condition are James and Snyder? The easterly two acres are in the river, two acres has gone to Joy by a prior deed, of

which Snyder had full notice, as the location was not filled into the deed and until the Joy deed was made and the title cannot now be disturbed by either James Snyder or the assignee, and of the westerly two acres of the six (6) James now, since the partition, owns five-eighths (⅝) and Snyder three-eighths (⅜), each subject to the mortgage of $50 per acre, and so this would be the result of the ten (10) acre title bond of 1860.

Next Snyder conveys back the six (6) acre location to James for $1 and James by warranty deed conveys to Snyder the entire interest in the two westerly acres of the six and two acres further west, making the four-acre location of 1869, the three-eighths (⅜) of the easterly two acres having, according to plaintiffs' theory, already passed to the assignee in bankruptcy and for which James now as an entirely new transaction gives to Snyder in his individual estate a warrantee deed with full covenants of title.

Plaintiffs do not state whether this conveyance of a three-eighths (⅜) interest in this westerly two acres of the six (6) so encumbered was given as in equal exchange for the entire interest in the same land and two (2) acres more further west. If they had, the absurdity would have reached its climax. But Dr. Wood and Segar, a witness who, if interested on either side, is interested in favor of the plaintiffs, and the records together show that an equal exchange was made of the rights arising from the title bond of 1860 as modified by the subsequent verbal agreements and the carte-blanche deed, if modified at all, for the four (4) acre location in full settlement.

315 The only way that the plaintiffs can escape from this dilemma is to assume that the location of four (4) acres was an entirely new purchase by Snyder with personal funds of his own acquired subsequent to the bankruptcy, which is against the evidence of Dr. Wood and Segar.

Miscellaneous.

X.

The same reasons plaintiffs urge in favor of their attachment deeds apply in a much stronger degree to the bankrupt deed and proceedings.

The plaintiffs say that Ess sold and conveyed the identical six (6) acres which the deed of 1864, filled up in 1868, conveyed.

This is not true if the deed is referable to its date of 1864. It is true if it is referable to the time of filling. They should say that Ess conveyed the identical six (6) acres which Snyder intended the deed of 1864, filled up in 1868, should convey.

So far as the doctrines of notice affecting Snyder under the registration act is concerned the deed of the six (6) acre location is referable to 1868 and is the making of a new deed if it is anything, but

so far as concerns the extent of the interest and the title represented and making an appearance in the record it is certainly referable to 1864.

There is no force in the point raised by the plaintiffs on page 11 as to James omitting to pay taxes on the attempted six (6) acre location. Two (2) acres belonged to the river and two (2) acres to Joy, and there was but one acre more omitted that went to tax sale. That is five (5) acres, and they might either be referable to the assessment being founded on an older survey or James might have thought that if Snyder claimed it he might be kind enough to pay the taxes on the one acre. It proves nothing, as the matters were in a very unsettled condition at the time. It is no estoppel and is not presumptive evidence of anything that can affect this case.

Again, plaintiffs say the conveyance of Snyder to James of the six (6) acres in April, 1869, was without consent of the assignee.

The assignee had no right to that part of the six (6) acre location which had gone to Joy nor to that in the river, and the new four (4) acre location included the westerly two (2) acres of the six (6), and the arrangement of 1869 did not violate any of the rights of the assignee, but gave him two (2) additional acres. The assignee did ratify this four (4) acre location by selling it in bankruptcy. If he attempted to sell the land that had passed to Joy the purchaser got no title to it. At the time of the bankrupt sale in 1871 the Joy deed was on record. Cobb and Bartlett got only Judd's interest in that Joy two (2) acres.

Plaintiffs also assert without any foundation whatever that a copy of the first or six (6) acre Snyder deed was before the bankrupt court, but that the four (4) acre Snyder deed was never called to the attention of the bankrupt court.

That is untrue, as copies of both deeds were found in the files of the bankrupt court and belonged to the bankrupt record.

Besides, the records of the bankrupt court do not show nor
316 purport to show all of the evidence which was brought to the attention of that court upon which was based the findings that the land in controversy belonged to the estate of the bankrupt. At all events the matter now is *res judicata*, and we are estopped from denying validity of findings and decree of that court.

On page 12 plaintiffs also assert that Snyder's discharge was set aside because he did not schedule the land covered by the six (6) acre deed; nothing else was suggested or mentioned in the case. The bankrupt records show differently.

The assignee cannot sell newly acquired property the right to which originates after the petition was filed, but the location of a right to land which originated prior to the bankruptcy can be made after—as well after as before the petition.

Tax-Title Matters.

XI.

The redemption of the land by the Hannibal and St. Joseph Railroad Company from the tax sale of 1869 was an error, for the lands assessed to Snyder for that year evidently contemplated the land as platted to Snyder on plat D, and the railroad company had no lands on that assessment.

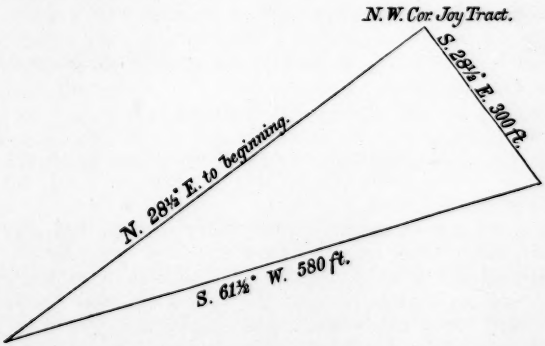
There is no force in the argument that because the exception of two acres redeemed is made in the tax deed that therefore the land bordered on the river. "Where there is a description in a deed followed by an exception which is uncertain, the exception may be void for uncertainty, but the description will stand." Thayer *vs.* Torrey, 37 N. J. L., 339.

Again, as to the point of misdescription in the advertisement for the year 1869, although it may appear that a portion of one call was omitted, yet there is sufficient certainty in other calls in the deed to locate all or at least the greater portion of the land, but the evidence was that the land was correctly assessed, and no record was shown to the contrary, and the last call — the deed reads: being the same lands assessed to Joseph E. Snyder for that year.

55 N. H., 405; 3 Dill., 312; 2 Tenn., 686; 47 Cal., 151.

But take the description as the plaintiffs give it, thus: Commencing on the northwest corner of the Joy tract, thence south 28½ degrees east 300 feet; thence south 61½ degrees west 580 feet; thence north 28½ degrees east to the beginning.

Now, again, the last call to the beginning must close the description, even if angles and distances have to be disregarded, and plat will be as follows, to wit:



317 If the angle given is followed, then the words "to the beginning" will form another line, to the beginning from point A to B. If the angle is disregarded the home call will follow the dotted line to the beginning. In either case the description will

cover all but a trifling corner of the land, as the line of 580 feet is at least 50 feet longer than is necessary to reach the western bounds of the land in controversy. See rectangular indication of lands in controversy.

The deed is in itself *prima facie* evidence that every prerequisite was complied with. See 6 Kansas, 311; 9 Kansas, 477.

The plaintiffs have only one other point in the matter of tax title that is worthy of notice, and that is, they allege that McAlpine, the county treasurer, acted as agent for purchasing for Richards.

The evidence does not show in its true interpretation that McAlpine acted as agent. McAlpine testifying that he acted as agent is not conclusive of that fact if things done show to the contrary.

The money was sent to McAlpine and deposited in his safe and did the bidding. McAlpine had no discretion, but acted on the instructions and bid made by Richards by letter.

"An absent person may, by letter to the sheriff, offer a sum for land sold at sheriff's execution sale, and, no better bid being made, it may be struck down to the absent bidder."

See 20 Ill., 266; Freeman on Exclusions, section 292. See McAlpine's evidence for what was done.

Points.

1. That this bond and assignment gave to Snyder an equitable right to an undivided ten (10) acres in the above-described land is too clear to admit of argument or require authority.

2. The position of counsel for plaintiffs that James and his wife conveyed six (6) acres of land by the (so-called) deed of July 27, 1864, is subject to several fatal objections. It was not a deed but a mere blank out of which a deed could be made, and the counsel for plaintiff will not assert that of itself it had any force or effect.

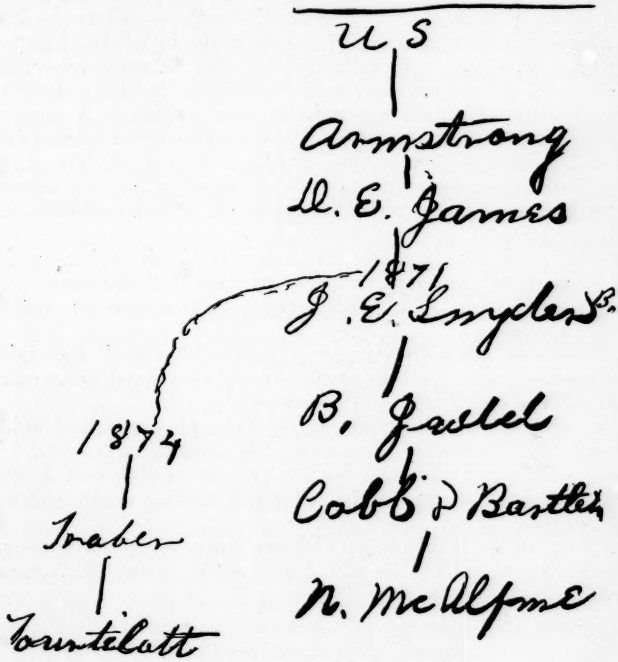
2. The alleged agreement that he, Snyder, might fill it up by description of property and name of grantee was wholly without force. By the laws of Kansas a conveyance of any interest in real estate must be in writing, signed by the party to be charged thereby or his authorized agent.

See Sec. 6, chapter 43, Gen. Statutes.

By the law of Kansas the power of an attorney to act for his principal in the conveyance of any interest in land must be in writing. See Sec. 5, *ibid.*

As the deed was originally no deed, if it acquired any effect it must have been acquired by the filling up done by Snyder, and Snyder must have acted as the agent of James in so doing, and he certainly had no written authority and his act was therefore void, and the deed, being before void, remained void. Even if he had a power of attorney for James his conveyance from James to himself was void, as an agent has no power to convey the property of his principal to himself. If the bankrupt estate did not get the four (4) acres on which the land in controversy is located, then this
318 estate acquired no lands and Snyder acquired nothing from

his title bond of 1860, as he could not, as has been shown, get the river-frontage lands previously sold to Joy or the lands that had washed away prior to the filling of the deed in 1868, and the western two acres of the six (6) *was* the eastern two (2) acres of the four (4). The doctrine of the plaintiffs that the deed of 1864 was ratified and made good seems to us to be a little pleasantry of the learned and sedate counsel.



The above plat represents the manner in which McAlpine received his title from the James heirs or from the bankrupt proceedings, the ink line showing the supposed title of Traber and Norman.

319 *Rulings on Evidence.*

Defendants ask the court to rule upon the following points concerning admissibility of evidence:

1. Defendants ask the court to rule out from the evidence the deed dated April, 1860, marked Exhibit "E," on the grounds that it does not cover the lands in controversy.

2. Defendants ask the court to rule out from the evidence the statements of E. L. Bartlett while on the witness stand as to the conversations had with S. A. Cobb before his death on the grounds

that the same is a transaction or communication had personally by the assignee of the subject-matter of this action with a deceased person under section 332 of the code.

3. Defendants ask the court to rule out from the evidence all of the evidence given in connection with and including the lands and claims held by Anton Honef and Rhodie as incompetent and irrelevant.

4. Defendants ask the court to include the bond and affidavit mentioned by the witness, E. L. Bartlett, on the stand as the instrument upon which he drew the redemption money, dated August 19, 1869, as a part of the record treated as read in evidence, and also to rule out all the evidence of said witness as to the contents and date of said record on the ground that said evidence is secondary.

5. Defendants ask the court to include the certified copies of deeds found in the files of the bankrupt court, as per certificate of the clerk of the district court of the United States, as part of the bankrupt record treated as read in evidence, attached to bankrupt record.

6. Defendants ask the court to rule out all the evidence introduced by plaintiffs as to the amount or nature of the consideration paid by defendants to Cobb and Bartlett for the title as irrelevant and incompetent.

7. Defendants ask court to rule out all evidence of the plaintiffs as to what Cobb and Bartlett's opinion was in regard to the merits of their title as irrelevant and immaterial.

8. Defendants ask the court to rule out all matters of evidence as to what said Cobb and Bartlett said in consultation to said E. L. Bartlett concerning their title on the ground that the same was irrelevant and incompetent and that it was confidential communication between attorney and client.

9. Also to rule out all matters of belief and opinions concerning the matter expressed by the widow and heirs of said S. A. Cobb as irrelevant and incompetent.

Special Findings of the Court.

Fact.

The defendants ask the court to find on each of the following questions separately:

1. Did the deed dated in April, 1869, commencing at the southwest corner of the Joy tract, Exhibit E, convey lands in controversy to the said Joseph E. Snyder?

320 2. Did the plat No. 9 on plat book at the office of register of deeds operate to vest Snyder with title to the lands in controversy?

3. To what deed or grant from D. E. James is that plat referable?

4. Did D. E. James, in 1869, ratify the filling in of the carte-blanche deed by Snyder?

5. What was the extent of the interest conveyed to Snyder by the carte-blanche deed of 1864?

6. Could it operate to divest Joy of title to the river front?

7. At the time Snyder filled in the carte-blanche deed did he have notice of the prior agreement between James and Joy for the purpose of riprapping of the river front?

8. Did Snyder have any interests in the land known as Armstrong's Wyandotte reserve No. 1, dating from 1860?

9. When did those rights receive their first valid location?

10. Did Snyder have any other rights in said reserve except those dating from 1860?

11. Was there a finding by the district court of the United States in bankruptcy that the lands in controversy belong to the estate of the bankrupt?

12. Does the evidence in the bankrupt proceedings disclose all the evidence upon which the court acted in its proceedings to sell the land mentioned in its order of sale and bankrupt deed?

13. Does the description in the order of sale of the bankrupt court, properly construed, embrace the lands in controversy?

14. Do the lands described in the bankrupt deed to Judd cover the lands in controversy?

15. Was the deed of four (4) acres to Snyder, dated 1869, brought to the attention of the bankrupt court?

16. Was Joseph L. Norman a partner of Lafayette Traber in 1871 in the prosecutions of the Jaccard claim?

17. Was Traber a partner of Norman's in the prosecution of the claims of Welland and Segar in 1874?

18. Was the said Norman a party to the record in the proceedings subjecting the property of the said bankrupt to the payment of the said Jaccard claim?

19. Did Traber and Norman become substantially the beneficiaries and purchasers of the lands sold under the attachment *of* proceedings instituted in the name of Segar and Welland?

20. Was the tax sale under which the lands in controversy were sold to C. I. Richards in 1869 valid or invalid?

321 21. Was the tax deed founded on said sale valid or invalid?

22. Was the tax sale of 1868 upon which was founded the tax deed of J. C. Douglass, introduced in evidence herein, valid or invalid?

23. Was the tax deed of said Douglass under said tax sale valid or invalid?

24. Did McAlpine while acting as county treasurer act as the agent of Richards and Douglass or either of them in receiving bids and striking off lands to either at the said tax sales?

25. Did the notice of the tax sale in the Richard- tax proceeding cover constructively the lands in controversy or any portion; if so, what proportion?

26. Did the plaintiffs ever have legal possession of the lands in controversy or any part thereof; if so, what part?

27. When did they obtain such possession?

28. Did defendants have possession of the lands in controversy in this suit at the time of the commencement of this action?

29. When did they obtain such possession, from whom, and how long did such possession continue?

30. Are the defendants now in possession of said lands?

Questions of Law.

1. Can the finding of the bankrupt court that the lands in controversy belonged to the "estate of the bankrupt" be now collaterally attacked herein?

2. Did plaintiffs obtain jurisdiction of the *res* in their attachment proceedings upon which they found their title?

3. Are not plaintiffs and their grantors estopped from denying the validity of the bankrupt title made to Judd?

4. Did the facts in this case vest in the assignee in bankruptcy any right of election to declare the final settlement and location of the four (4) acres in 1869 void?

5. Could the said assignee upon the facts, if he had instituted proceedings in equity, have recovered the carte-blanche river frontage as part of the estate of the bankrupt?

6. Is the absence of a formal instrument of assignment from Samuel A. Vose, assignee, resigned, to Henry N. Ess, his successor, of any vital importance in this case?

7. Is the date of the deed—April, 1869—of four acres to Snyder conclusive as to the time when the rights upon which this deed is founded first accrued?

8. Is the consideration mentioned in the satisfaction of the title bond of 1860 conclusive that the satisfaction is referable to the carte-blanche deed location instead of the four-acre location?

322 9. Is not the satisfaction referable to the whole transaction of April, 1869?

10. Is not the four (4) acre location the result of that transaction?

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223 *Brief "C."*

In the Supreme Court of the State of Kansas.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERING, NICHOLAS McALPINE, and JAMES M. MASON, Plaintiffs in Error,
vs.
GEORGE W. TOURTELOTT and GEORGE P. ALLCUTT, Defendants in Error.

J. M. MASON, *Counsel.*

324 *Brief of Plaintiffs in Error.*

Statement of contents.

I. Objection to S. W. corner call.
II. Objection to sheriff's deeds.
III. Possession, Hoenf lease, &c.
IV. Contents of judicial writings, bankrupt record.
V. Opinions of parties and privies.
VI. What Bartlett told McAlpine about claiming title.
VII. Correction of record, tax title.
VIII. Opinions after title has passed.
IX. Whether Mason had an interest.
X. Tax records offered by plaintiffs below.
XI. Objection to reading release.
XII. Objection to reading deed from Segar.

Review of findings.

XIII. Their deed of 1864 covered whole instead of three-eighths of the land.
XIV. Verbal authority to fill carte blanche deed.
XV. Reference to plat No. 3.
XVI. Considerations for the conveyances of 1864 and 1869.
XVII. Statement that James wrote release on the bond, and that bond, contract, and assignment were all there when Segar signed release.
XVIII. Deeds which purport to convey, &c.
XIX. Findings in regard to Snyder's residence.
XX. Actual possession of disputed tract.
XXI. For what purpose Norman filed his petition.
XXII. Finding as to when Traber and Norman sold Jaccard claim.
XXIII. Consideration paid by McAlpine for Cobb and Bartlett deed.
XXIV. That Traber redeemed the lands.
XXV. Time when Bartlett drew redemption money.
XXVI. Opinions of Mrs. Cobb and Mr. Bartlett.
XXVII. Tax-title matters.
XXVIII. General finding 18 and how it is supported. Refusal of the court to make special findings.
XXIX. Overruling motion for new trial and judgement.

325 Whenever in this brief the terms plaintiffs or defendants are used without other modifying words it will be understood to mean plaintiffs or defendants below respectively.

A statement of the facts of this case will be found in the first five pages of the former brief of the defendants to the court below and in the accompanying brief in evidence.

This case is an important one not only in the value of the subject-matter in litigation, but in the principles of law to be settled.

In all matters of this kind it is more essential that the welfare of the Commonwealth should be enhanced by the determinations of these questions upon principles of justice and reason than that any suitor should receive the favor of the court, since the violation of the consistent principles of law and fact, though it may benefit the individual, will prejudice the public interests.

Among the incidental questions which arise in the adjustment of this matter may be mentioned the following:

1. Was it in the power of the bankrupt court in 1871 to sell and convey title to property the equitable right to which the bankrupt acquired in 1860, whose voluntary petition was filed in 1867, and who received a deed of the property in 1869 in partition between him and other owners?

2. Is it the time when the right to property accrues or the time when the interests are partitioned that determines the jurisdiction of the bankrupt court as to what belongs to the bankrupt estate?

3. Where an assignee in bankruptcy has become fully clothed with his trust and has jurisdiction of all the assets of a bankrupt and resigns and another assignee is appointed vice by the bankrupt court, who duly qualifies and accepts the trust, and such court duly orders the first assignee to convey to his successor, and thereafter the court in all subsequent proceedings treats the acts of such second assignee as valid, who, under the orders of the court, proceeds to the settlement of the estate and sale of the bankrupt assets, all of which proceedings are duly approved by order of the court—

Query. Will the mere absence from the record of the formal instrument of assignment of the original assignee to his successor in trust vitiate such bankrupt sale and deed pursuant thereto three years after?

4. Can parties claiming under subsequent attachment of the effects of the bankrupt urge the absence of such formal instrument for the purpose of invalidating such prior sale?

5. If any such former conveyance is essential will not it be presumed in favor of the validity of the former sale that such prior conveyance from one assignee to the other was duly made as ordered by the court?

6. The provision in the bankrupt law, sec. 18, is as follows, namely:

"When by death or otherwise the number of assignees is reduced the estate of the debtor not lawfully disposed of shall vest in the remaining assignee or assignees and the person selected to fill vacancies, if any," etc., etc.

7. Does not this clause of the bankrupt law, providing for the appointment of an assignee to fill such a vacancy, also provide that the property of the bankrupt shall vest in him? Suppose the outgoing assignee is contumacious or has fled the country or is dead, must a lawsuit be brought by the court to get the title out of him or out of his heirs? This is absurd.

326 8. After the United States court sitting in bankruptcy has taken jurisdiction of the person and property of a bankrupt, has proceeded regularly according to the forms of law, has duly caused an examination of the affairs of a bankrupt with a view to ascertain whether or not certain property not originally scheduled was property belonging to the estate of the bankrupt, has referred the matter for examination and proof, and upon a report by the referee has adjudged that the property mentioned in the report did belong to the estate of such bankrupt, has proceeded to sale and approval of the sale of such assets and ordered a deed to be made to the purchasers, is it within the jurisdiction of the State courts to sit in judgement by way of review to the decision of the Unites States court and to say that such property does not belong to the estate of the bankrupt in favor of other creditors of such bankrupt?

9. Where a creditor institutes proceedings in his own name to collect a debt, and just before the sale of property to satisfy such debt assigns his claim to another, which assignment, however, is not made a matter of record, but the original creditor continues to allow his name to be used as party in the case in all subsequent proceedings and the property is sold for value to a *bona fide* purchaser—

Query. Is not such original creditor estopped from questioning the title of such purchaser derived from such sale, especially where no knowledge of such assignment has been brought home to such purchaser, and are not all parties and privies estpped as well?

10. When service is by publication only and the attaching creditor bids in the property for his debt, does he acquire any title to such property where the statutory jurisdictional requisites have not been complied with?

1. Add to this the fact that the property had been previously sold under bankruptcy proceedings to a *bona fide* purchaser for value, under proceedings as instituted by parties holding the interest of the original creditor;

2. Add to this the fact that the claim sued for was barred by the statutes of limitations or was of that class that might have been proved up under the former bankruptcy;

3. Add to this the fact that this same original creditor helped to conceal the bankrupt assets from the bankrupt creditors presumptively for the purpose of saving it for his debtor, thus enabling him to attach it afterwards;

4. Add to this the fact that the persons who controlled and really owned the interest of this original creditor (if they did not own the creditor himself) were the same parties who subjected the lands to sale under the bankruptcy—

And we have the question again presented whether the purchaser

in this attachment proceeding, plaintiff in the prior bankrupt proceeding, is not estopped from setting up such pretended after-acquired title.

I.

The court erred in allowing the deed from David E. James and wife to Joseph E. Snyder, dated April 13, 1869, to be introduced and read in evidence by the plaintiffs over the objection of defendants. The instrument referred to is found on page 65 of the Record. The first call for commencing point in the description is as follows, viz: Var. 11 degrees E., beginning at the southwest corner of a tract of land conveyed by said James to one James F. Joy and now known as railroad land, said southwest corner being the 327 northwest corner of a certain parcel of land now owned by said James, thence, etc. See page 23 for objection and ruling

This is the only instrument through which plaintiffs could possibly deduce a chain of title through Snyder to any part of the lands in controversy.

If this instrument does not by its terms cover the lands in controversy in fact a reversal of the findings and judgement below must follow as a matter of course, since there is no jurisdiction, either in this court or in the court below, to grant defendants in error equitable relief under the present state of their pleadings in the nature of an ejectment.

Since any title, claim of title, or naked possession is good against one who shows no better right, and the presentation of a deed which does not describe the land in controversy is of no avail to a party seeking to recover against one in possession.

The locality of the James F. Joy tract is given in the deed from James to Joy. See IV, pages 57 to 63, with a plat accompanying such deed, and plats "C" and "D," pages 680–682, properly locate such Joy tract.

If the court will turn to either of those plats and place a pencil point on the corner nearest to the southwest corner, which will be point X, plat D, and then follow the calls in said deed V, page 65, it will be quickly seen that the land described in such deed does not include any portion of the lands in controversy. To understand these plats it will be necessary to recognize the fact that the line on the right, marked "State line," represents the west line of Missouri and runs due north toward the Missouri river, while the red line, starting from southeast corner sec. 11, t'p 11, rg. 25, bears north 28½ degrees west, through the Joy tract. This red line last named was the base line of the partition shown in plat B, on which plat it is shown as a black line, with the distances given along from one allotment boundary to another. It therefore appears that the Joy tract lies with its longest way 1,086¾ feet along the Missouri river bank, bearing north 28½ degrees west along its westerly boundary, and is very correctly represented in the scale which is used in both plats, C and D.

The court will now turn to page 5 of the brief prepared by de-

fendants for the use of the court below and read from figure 1 or middle of page 5 to page 9, where this subject is discussed, and it will sufficiently appear that the southwest corner of the Joy tract is at X, plat D.

The argument of the defendants in error that the last part of the call for the southwest corner of the Joy tract asks for the northwest cor. of the James tract, and that same point must be found which will satisfy both requisites, is a fallacy, for no such point can be found, since the corner which they desire to fix is no more the northwest corner of the James tract than it is the southwest corner of the Joy tract, and the call for the northwest corner of James tract is repugnant to southwest corner of the Joy tract. "Where two clauses in a deed are so totally repugnant to each other that they cannot stand together the first shall be received and the latter rejected."

Tubbs *vs.* Gatewood, 26 Ark., 128.

Even according to above authority, if we put it stronger, and the language had been "said southwest corner of the Joy tract being the northeast corner of the James tract," even then the southwest corner of the Joy tract must govern, and if there were no precise southwest corner of the Joy tract, then the corner nearest the southwest corner of the Joy tract must govern.

Much argument will be adduced to show that the doubtful calls in the deed at page 65 secured a practical location under the plat of May 3rd, 1869. See 24–682, plat D, in which plat appears a tract marked Jos. E. Snyder, but this plat locating lands to Jos.
328 E. Snyder may as well be referred to former grants from James as to the deed of 1869, since it is well proven in this case by the evidence of Dr. Wood and Segar, pages 154 to 195, and title bond, page 152, and carte-blanche deed of 1864, page 198, that Snyder owned some lands somewhere in that bottom ever since 1860, and the direct (not inferential) evidence of Dr. Wood and Segar is that it received its first practical location in 1869, as designated on that plat. The plaintiffs below, therefore, had no right to recover a judgment in ejectment against the defendants or to obtain findings of the court built upon inferences.

We therefore say that it was error of the court below to allow said instrument, page 65, marked "V," in evidence in support of that part of finding 11. See "F," 654, and "G," page 654, referred to in assignments for error, No-. 59 and 60 of petition in error. See plat-C and D, page- 680–682. And there is by parity of reasoning no evidence whatever to sustain the findings of the court Nos. 59 and 60, especially No. 60, "That said deed purports to convey the parcel colored yellow, red, and blue on tracing C."

If the plaintiffs in error are correct in the above there is no need of further argument in the case, since it is only through the Snyder deed of 1869, at page 65, that the defendants in error can claim any title at all. If the court below had ruled correctly in these matters it would have ended the case.

It may be said that defendants below also claimed the lands in

controversy under this deed. It is true we trace one line of title through this deed; but may we not come to the same conclusion that Mr. Cobb and Mr. Bartlett did to it, that our title under it was doubtful.

See evidence of Bartlett, page 536.

But we are not obliged to rely upon our title traceable through Jos. E. Snyder and his bankruptcy, although, if he did have any rights there, we certainly got it under our conveyance from Cobb and Bartlett, "L," page- 370, 374, 376, and such grantors derived it from Snyder under their bankrupt deed, H, page 356.

But, believing with the Cobb and Bartlett parties that the deed of James to Snyder of 1869 failed to convey a good title to Joseph E. Snyder, defendants below purchased of the real apparent owner according to the record, viz., the widow and heirs of D. E. James—see S, 378—and also purchased two outstanding tax titles in order to further perfect their title. See p. 410, Y, 420; R, 426; Y, 416; Z, 430.

But see the matter fully discussed in former brief of defendants below, pages 5 to 9, with authorities there cited.

Even if we are wrong in all the above (which we are not)—yet supposing that we are—we will proceed to argue the case upon the basis that the deed of 1869 did cover the lands in controversy; in which case, if it be considered by the court to pass a good title to Snyder, we claim under it under our bankruptcy deed. H, 356.

II.

The court erred in allowing the plaintiffs below to read in evidence the sheriff's deeds, dated April 18, 1875, and March 8, 1879—see pp. 69–89; see 2nd assignment of petition in error—over the objections of defendant below.

Supposing the plaintiffs in error had no rights except a bare claim of title, with possession as alleged in the petition, page- 5 to 7, yet the defendants in error had no right to recover a judgement or to secure the findings upon which such judgement is based unless they show a better title. On pages 9 to 12 in Mason's brief and page 10, Cobb's brief, to court below it is shown that the sheriff's deeds are void, the parties plaintiff failing to obtain jurisdiction in their attachment proceedings, suits 1735, 1734, pages 438–515 of the
329 record. See index to suits 1735, 1734. For specification of different steps of such proceedings, a statement of the objections to such deeds, and ruling of the court introducing same over objections, see pages 25 and 26.

The principal ground of objection therein stated being that the attachment proceedings upon which the title of plaintiffs rest were void for want of jurisdiction over the property.

Specific points of objection referred to in the assignment of objections in the record lettered from "A" to "I," which the court will please refer to, being an index in itself.

We will not argue this matter at length, believing, as we do, that

the bare attention of the court to the fatal defects in the jurisdictional requisites, with the argument already alluded to, is sufficient, and that the strongest argument we can use is to say that these proceedings will not bear scrutiny, and whenever they are carefully inspected they will fall of their own weight.

With these also fall all the findings of the court based upon the legality of these deeds, and also all the findings of the court upon which these deeds are allowed to stand.

If these deeds were erroneously admitted in evidence, then, not only is this 2d assignment of error well taken, but all the subsequent rulings and proceedings of the court were in error, and the court should have dismissed the case, and all the long array of pretentious and superficial findings *are* erroneous, and this whole fabric of sophistry falls to the ground.

See authorities.

III.

The court erred in overruling the objections of the defendants below to the verbal evidence of Lafayette Trabor, etc., and in refusing to strike out certain evidence referred to in the 3rd assignment for error, and in allowing the same in evidence over the objections of the defendants below. (See also V and VII.)

The plaintiffs, in their petition, charged that the defendants were in possession of certain lands in controversy, but excepted the lands occupied by Rhodie and by Hoenf, located at A and E, plat D, page 682, from the petition to which plaintiffs held possession.

Plaintiffs, on the trial, then produced the evidence of Traber to show that they, the plaintiffs, were and had been in the possession of the Rhodie and Hoenf tracts since 1879. See record referred to in this assignment in petition in error.

Of course this question was not in issue in the pleadings, and of course the evidence was incompetent. We know of no rule by which a party can prove himself in possession of one piece of land by showing himself in possession of quite another piece, which has a well-defined enclosure.

Besides, for what purpose did the plaintiffs below desire to prove themselves in possession of the lands at A or F, in the spring of 1879, before the defendants purchased and entered under their purchase?

If they had any title at all, and the defendants below had none, as they allege, then the bare question of possession could cut no figure, since the right of possession would necessarily prevail over the naked possession.

But it would appear that the plaintiffs below did not think that they had a good title, but perhaps hoped that it might be made to appear that the defendants' title was no better than their own, and then the question of possession might have been important. In that event if they had been in peaceable possession under claim of title and the defendants had entered upon them and ousted them without having a better right, then it might have been a question dependent upon the possession in the spring of 1879.

330 But even then the possession in one enclosure excepted from the petition would not have been an inference of possession outside of that enclosure in adjoining lands included in the petition.

It is true that there is a legal doctrine that a person can occupy a part of the land in the name of the whole where he occupies under a deed defining his boundaries. Then, although he encloses only a part, yet he is regarded in that case as in possession of the whole. But this doctrine has never been carried to the extent of allowing one adverse party, who has a small enclosure on one corner, to be considered as in actual possession of the whole of an unenclosed tract of land, the true title to which is in dispute, and which is similarly occupied by such adverse claimant.

Mr. Rhodie, the tenant of Tourtelott, did not *not* claim to occupy more that a tract of land 25 by about 50 feet at A, and the limits of the Hoenf lease were specifially circumscribed and limited by the description in his lease.

Nor does the statement of Rhodie—page- 142–147—that he was to look over the ground for his landlord help out the inference of possession. The simply casting the eye over large tracts of unenclosed land and saying it is mine does not give either title or possession unaccompanied by other acts of possession.

On the other hand, the defendants below also had tenants contemporaneously in possession of the same lands outside of the excepted enclosures of Rhodie and Hoenf, but the assumed possession of the lands outside of actual enclosures stood on a better footing in the case of defendants below than in that of the plaintiffs below, because the defendants had given their leases to their tenants so as to include the whole of the disputed tract, and their possession antedated the assumed possession of plaintiffs several years, and was prior, continuous, and subsequent in its relation to the pretended possession of plaintiffs.

In this matter of inference, therefore, the defendants must have preference, as the evidence stands.

See evidence of Traber, 101–121; leases of defendants, 95 to 99.
Tourtelott, ev., 126–141.
Rhodie, ev., 141–149.
Bartlett, ev., 524–538.
Mason, 543–550; leases, 553–559.

Leaving it entirely, after all, to the better title to draw to it the possession, in that the possession should follow the right of possession.

Moon *vs.* Rollins, etc., 36 Cal., 333.

Clearly, therefore, all the above evidence offered by plaintiffs was incompetent and ought to have been excluded, and especially that portion which referred to the Rhodie and Hoenf enclosures.

Also all the findings of the court based upon this supposed evidence must fall to the ground, to wit, that part of the findings of the

court mentioned under the 71st assignment for error. See finding at R, page 666, in which it is stated that after the execution of said sheriff'- deed said plaintiffs had actual possession of the lands in controversy.

A full reading of the evidence shows conclusively that there was error in allowing the evidence above mentioned; but even allowing it, yet it ought not to have been considered. The only effect it did or could have had was to mislead the court, and that the finding was manifest error, based, as it was, upon the incompetent evidence, is clear. See further discussion of this subject under the head of Abandonment of Title, former brief to court below, pages 12, 13.

Under above propositions see authorities there cited.

See also Wharton on Evidence, 1334, and cases there cited. The objections set forth in the 4th, 5th, 6th, and 7th, 9th, 10th,
331 11th, 12th, 13th, and 14th assignments of error, as indicated and referred to therein, rest upon the same ground and help to sustain the argument and reasoning that said rulings were all and each of them persistently erroneous and the findings mentioned in the 71st assignment of error concerning actual possession of the plaintiffs below was a fallacy, and above is ground for reversal in this case, providing such possession is of any importance in the determination of this case. At all events, it must have tended to confuse and mislead the mind of the court, and it is a matter for serious consideration whether it did not take the mind of the court off of the real substantial issues involved in the case, since one error always begets another, and erroneous judgement was the result of erroneous findings based upon erroneous ruling upon testimony, mingled with a want of clear perception concerning the weight to be given to such fallacious evidence.

IV.

The court erred in overruling the objections of the defendants to the question by plaintiffs set forth in the 8th assignment for error and in allowing said witness Traber to continue to answer such question over the objection of defendants below.

The evidence called for by the plaintiffs' question was secondary evidence, and asked for the statement and opinion of the witness as to the contents of judicial writings without any preliminary proof of loss or that they were not accessible to the plaintiffs, and this, too, by a witness who was interested.

To allow parties and privies in interest to thus substitute their own declarations for the solemn verity of judicial records would contravene the established principles of our civil policy and would sweep away at once the bulwarks of law and order. I will not waste words on a proposition so plain as this that such evidence is incompetent. The only question is, What effect did it have upon the case? Was the admission of this evidence injurious to the defendants below; and, if so, wherein? Did it lessen the chances of a judgement in their favor? If it did, it is error and ground for reversal of judgment and findings.

Well, let us see. The plaintiffs below sought by this kind of proof to establish the fact that the bankrupt records did not speak correctly.

The plaintiffs undertake to introduce Mr. Traber's statement as to what those records mean—as to what such petition was for—instead of introducing the petition to speak its own language. The question standing alone and by itself is an absolute fallacy and an absurdity, and the petition referred to, page 288, does not show any such purpose, and the statement of Traber is absolutely false, as shown by the record.

Yet the witness is allowed over the objection of defendants below to continue the answer and say, or intends to say, whether he says or not, that the description in the bankrupt deed (see H, 356) was incorrect—a misdescription—thus endeavoring to weaken the effect of that instrument of evidence which in one view of the case is a proof of the defendants' title.

Traber says or intends to say in substance that it was only by misdescription that the lands in controversy came to get into the bankrupt deed at all.

We may not be able to ascertain definitely what effect such evidence had upon the mind of the court. We find no special finding saying in so many words that the lands in controversy only got into the bankrupt deed by misdescription, but the general finding 18 shows pretty conclusively that the court accepted the witness Traber's theory, and a careful examination of the 13th finding of the court, pages 667–671, does not in any way negative this conclusion, but helps
332 on the inference that the court proceeded upon the grounds stated by the witness, and that such statements did have an effect, as it naturally would, to mould the findings and judgement against the defendants below, for it is a noticeable fact that while concerning the sheriff's deed to Traber and all along in plaintiffs' claim of title the court finds that all their deeds purport to cover the lands in controversy, yet in finding No. 13 it does not appear that the court made such finding affirmatively except by setting out the description in the words of the deed and leaving it to the general finding to destroy any possible inference that he so regarded it.

Whatever may have been the opinion of the court upon this matter it is not disclosed, except so far as it may appear inferentially from the general finding No. 18, page 675.

It is certain that such evidence naturally would tend to weaken the case of defendants below, and it is certain that it could have had no good effect. It is safe to conclude that it injured the defendants' case and was such error as would, if not alone, *would* assist in forming grounds for a reversal of the judgement herein, since every error, however obscure its effects, must be the foundation of other errors.

V.

The court erred in overruling the objections of the defendants below to the evidence of the witness Bartlett as set forth in the 15th assignment for error.

In the first place, it was not legitimate cross-examination and it was improper for the plaintiffs below to interrupt the case of the defendants and to crowd their evidence into the trial at this time over the objections of the defendants. See also III and VIII.

We cannot always estimate the amount of injury that such a course will produce in breaking into and confusing the line of proof. It is certainly very bad practice, and we believe it is error and ground of reversal, and it can but tend to break the force of the evidence of defendants' case; and the 21st assignment stands upon the same ground and the same remarks apply; but, aside from all this, it is incompetent, as being the introductory question to an illegitimate line of proof calling for the opinions and conclusions of Cobb and Bartlett and their statements as to what they thought of their title in a legal point of view prior to the sale to McAlpine, one of the defendants; whether there was a dispute between Traber and Norman on one side and Cobb and Bartlett on the other as to the title of the lands in controversy or whether Cobb and Bartlett believed that they had a good title or not has nothing to do with the validity of *the of* all their rights or chances of title to the disputed tract to McAlpine. If Cobb and Bartlett supposed that there was a legal defect in their title, which had no foundation in fact, yet that Cobb and Bartlett made no direct concessions to any adverse claimant, but continued to hold and maintain an appearance of claim and possession up to the time that McAlpine purchased and turned over such possessions as they had to their purchaser, even though at the time of such conveyance to McAlpine propositions for a compromise were pending, yet McAlpine is not estopped from showing the truth, and that Cobb and Bartlett were mistaken in their opinions. Nothing like an estoppel arises unless third parties have acted upon the tacit admissions of the parties against whom the estoppel is urged. Nothing of the kind appears in this case. It cannot be urged for a moment that a party is to be deprived of title because of his opinion concerning it. The idea is absurd and needs no further comment.

The evidence called for and elicited by this question was entirely incompetent, and it was error and ground for reversal for the court to allow such evidence; but see further discussion of this subject, former brief to court below, pages 12, 13.

333 The 16th, 17th, 18th, 19th, 20th, 23rd, 24th, 25th, 26th, 29th, 30th. 31st, 32nd assignments of error stand upon the same ground, with the addition of other grounds mentioned in 16th, that the witness Bartlett stood in the attitude of assignor of a thing in action, testifying to personal transactions with a deceased person, it appearing in the evidence of Bartlett that he conveyed or assigned the subjec-tmatter to McAlpine,—see page 524, etc.—and that he was the attorney and presumptive heir of A. B. Bartlett, another assignor. See 528, 524, 533, 394, 376.

Also that the communication was privileged and was in the nature of a communication between attorney and client, Bartlett, according to his own evidence, having acted as the counsellor of Cobb. See 532.

And in the 7th, with the still additional ground that the question was leading, the attorney evidently endeavoring to thrust the question between the teeth of the witness and to get him to say yes to it.

In all of which there is error and ground for reversal, such matters of opinion and belief, unaccompanied by acts modifying the conduct of third parties, being entirely incompetent to show an abandonment of title, which was the purpose of the plaintiffs below, as stated on page 528.

The finding of the court at R, page 666, and again at Z, page 673, and the general finding, page 675, can be explained in no other way than that this class of evidence had weight with the court in support of the plaintiffs' patent paradoxical abandonment theory.

Thus again we have an erroneous judgement, based upon erroneous findings, founded upon erroneous rulings in regard to evidence, ignoring the statute of frauds, all of which, as fall they must, must fall together.

A proposition so plain needs no authorities.

See Teft *vs.* Wilcox, 6 Kas., 46.
Lee *vs.* Blackburn, 11 Kas., 190.

Also see Wharton on Evidence, 1157, where it is said: "The declarations of a party in possession are admissible in evidence against the party making them not to attack or destroy, for that is a record *and* of a higher and stronger nature than to be attacked by parol evidence." See cases there cited.

And as to prior possession and contested interest see Wharton on Evidence, 1334.

VI.

But the court erred in overruling the objection by defendants below under the 19th assignment for error in petition for error on other grounds.

The question asked Bartlett was, "Did you tell McAlpine at the time that you made no claim to the property for your father or Mr. Cobb?" It is evidence from this question and answer that Bartlett was acting or assuming to act as the attorney for Mr. Cobb or, as was more probably intended, the heirs of S. A. Cobb and of his father, as previously suggested.

But this question and answer is clearly incompetent and irrelevant on the general ground that it is in conflict with the writings between the parties. See conveyance, page 370; powers of attorney, 374–376. And this conveyance shows the receipt of a consideration, and assumes that Bartlett and Cobb heirs had something to convey. This question does not ask when this statement was made, and from all that the record shows it might have been the instant after the trade was consummated and have been intended to mean that, now that McAlpine had purchased, he, Bartlett, made no claim for his father or Mr. Cobb, and might be taken to mean something or nothing. At all events the declarations of the agent in the absence of his principal can neither have the effect to give or take away title

from the grantee. The utter indefiniteness of the evidence renders such evidence incompetent, but even if it should be construed to mean that he, Bartlett, made such declaration before the transaction it cannot affect the title, founded, as it is shown to be,
334 upon opinion and not fact, to say nothing of the fact that the evidence is fully negatived by McAlpine at bottom of page 539.

And even if a person believing he has no title and so declares, yet makes a deed of conveyance to another for a valuable consideration, adverse claimants who are no parties to this col-oquey and did not hear it or act upon such declaration in any way, can make no use of such evidence in an action to recover against the grantee.

But the finding at Z, page 673, and the general finding 18, page 675, shows that the court considered this kind of testimony in making up its findings.

Such finding is error, and based as it is on erroneous rulings upon evidence, rulings, findings, and evidence fall together.

See discussion of abandonment theory, III, IV, IX, and pages 12, 13, former brief.

VIII.

The court erred in sustaining the objections of the plaintiffs below to the question propounded by the defendants below as stated in the 22nd assignment for error. In this question McAlpine was asked to state how it was that certain lands were excepted from a tax certificate unless grounds are laid by the pleadings under the forms of equity; it is generally improper to allow parol proof to explain the language of a record, and in this connection see the argument of the plaintiffs in error under point IV under the 8th assignment for error. Clearly the objections of the defendants below, under such 8th assignment for error, were to the same kind of evidence as the objections of the plaintiffs below under the 22nd assignment; yet the court overruled the defendants below while it sustained the plaintiffs.

This was error and ground for reversal.

In the one case the ruling applied to a bankrupt record, in the other to a tax record. There was no difference in principle, as the purpose of the parties was the same in both cases—to show error in records upon which were based certain documents of title under which each claimed in order to show that the deeds of each respectively covered particular lands.

If the court allowed such evidence in the one case it should in the other.

The effect of this evidence can only be traced in the 18th general finding, page 675, as the court made no special finding or conclusion of law as to what or whether any lands were conveyed in the tax deed spoken of in the question at S, page 560.

The effect of this error must, however, have been prejudicial to the defendants' case, and involves and was certainly an error, which it is the duty of this court to notice, unless by some strained argu-

ment it be made to appear that there is a distinction without a difference.

The 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 39th, and 40th assignments for error should also be considered in this connection.

The suggestion contained at Y, page 567, under 28th assignment for error, that McAlpine failed to do his duty in not entering all the taxes on the records, is sufficiently argued in the former brief to court below, pages 12, 13, and the court will therein see how this matter ought to be regarded.

Upon this evidence, however, the court found, as will appear of page 672, this evidence of Bartlett's was mere matter of opinion. No one will assume that Bartlett knew anything about this matter except from the records. It was simply asking Mr. Bartlett's opinion, and the evidence was secondary and incompetent on many grounds.

It is difficult to see, however, how McAlpine's neglect in this matter can affect this case, since it is conceded that McAlpine
335 obtained all the title the Cobbs and Bartletts had to this land, whatever that title was, and the discussion of whether McAlpine paid full consideration for the property ought not, in our opinion, to enter this controversy, since a bare gift or voluntary conveyance is good as against the plaintiffs below.

Although a fair consideration of the statements made by Bartlett and McAlpine respectively, pages 533, 534 and 538, 539, will show that the 14th finding of the court, page- 671, 672, so far as concerns consideration paid, is not well established, as the statements of Bartlett in the other parts of his evidence as to material points in the case are positively shown to be false, authorizing the court, under Kansas decisions, to disregard the whole of his testimony.

It is, however, evident that the court erroneously regarded this as a point in the case, and no doubt it had its effect to prejudice the rights of the defendants below and mould its decision.

VIII.

The court erred in allowing evidence of opinion and belief of parties in interest after they had parted with title to the subject-matter of such opinion.

See part of the objection under 23rd assignment for error.
See also III and IV.

As to whether the ruling of the court mentioned in the assignment was erroneous will depend, perhaps, partly on whether the certain finding of the court at Y, page 672, is correct.

Words fail to express the just indignation we feel in touching upon this finding. The English language is barren of terms to express how keenly we feel the outrage which has been thrown upon us. Nothing in the case tends to establish any such finding. The records of Wyandotte county, with their implication of absolute verity, stare this falsehood in the face. The perjured evidence of the witness E. L. Bartlett, by whose testimony alone can such an

inference be raised, is clearly incompetent to vary and contradict the records in the office of the county treasurer.

The motive that led this man Bartlett to become the willing instrument of the plaintiffs below to secure a judgement agains- the defendants below by indirection was the bitterest, the most intense, that could actuate the human mind. It was the jealousy and chagrin arising from a realizing sense of the situation and a lively regret in his failing to comprehend, prior to the time he sold to McAlpine, the full nature of the legal questions involved in the controversy between himself, as the representative of the Cobb and Bartlett interest, on the one hand and the plaintiffs and Traber and Norman on the other.

But there is no implication or inference of fraud on the part of McAlpine in purchasing such claim. It was a clear case of open-handed, fair bargain and sale. McAlpine paid all the parties asked for their claim. If McAlpine knew at the time of his purchase that he must win his way to a realization and enjoyment of his purchase through a long and tedious litigation, it was his own matter.

He accepted the gage of battle hoping, believing, convinced that the assumed title of the plaintiffs below was a pretentious sham. If the parties from whom he obtained a claim failed to discern the full merit of their title, it was no fault of McAlpine. No deception was resorted to and no advantage taken of them.

There were no sufficient grounds for a resort to open, flagrant, revengeful perjury to defeat his grantees after he had parted with his claim.

Does the court want to know whether the plaintiffs in error have any foundation of evidence upon which to base such forcible
336 and earnest language? If the court will turn to the copy of the Tax-Receipt Book, page 619, and observe the date there recorded when Bartlett drew this redemption money alluded to in this 23rd assignment for error and the finding at Y, page 672, and in support of the record at treasurer's office, refer to the evidence of William Albright, county treasurer of Wyandotte county, pages 628, 629, then compare the evidence of Bartlett contradicting the record, pages 560–568, recalled, see 630, 631, and compare with evidence of Mason, pages 632, 633, E. L. Bartlett again at 634, and also evidence of N. McAlpine, 575, 577, 628, it will be seen that not only is the finding of the court at Y, page 672, error, but that the evidence offered to contradict and swear down the records of Wyandotte county is incompetent.

But there is another matter which should be considered in this connection, and that is the error of the court suggested in the 48th assignment for error, as to the objection to the Exhibits N and O as part of the record—see pages 622–624—and as part of the same question the overruling of the motion for a new trial under 88th assignment of error.

Now, whether or not it was error for the court to refuse to consider in evidence the affidavit and bond referred to by the witness Bartlett as fixing the date when the redemption money was paid by him—see evidence of Bartlett, 562, 619, 622, 625, 630, 634, under the

statement drawn in the case in error in the handwriting of the attorney of the defendants in error, Judge Brumback, page 620, under all the circumstances and in the notice on the attorney below and application recited to be contained in the printed matter at C. 4, page 690—is one question and as to whether the court erred in overruling the motion for a new trial on the ground of accident, surprise, and newly discovered evidence, as sustained by the affidavits attached to such motion for a new trial, is another.

The application to have the same considered in evidence was certainly in time and before the case was finally submitted, as shown by the record, pages 642, 643.

Due notice was served on the plaintiffs' attorneys of the application, as shown in page 620 and in printed matter, C. 4, 690, and the same was presented to the court prior to the April term, 1881—see certificate of the judge immediately following the petition in error—and it is not to be doubted that the equities of the case would have been subserved if *if* the court had received and considered the evidence, inasmuch as Mr. Bartlett directly referred to it in his evidence as fixing the date of the receipt of the redemption money, and it does certainly seem that the court should have preferred to have had access to such exhibits, N and O, rather than to have allowed the fallible, treacherous evidence of memory of one man, contradicted by evidence of two better men, to overcome and stultify the records of the county. It is very easy for an individual to be mistaken as to a date when he depends alone upon his memory, but it is not possible that county records can continue to repeatedly speak erroneously, and it is not competent to overcome such records by any such precarious proofs.

We think that the court erred in not receiving such evidence under the circumstances stated in the affidavits attached to such motion for new trial. See pages 700 to 703.

It is hardly to be supposed or to be explained how the court could have made the findings at Y, 672, under the weight of evidence against such a finding and the only pretended evidence in its favor being clearly incompetent; but verily courts do strange things sometimes.

One thing is certain: A refusal to so admit the evidence is ground for a new trial, as manifestly the defendants are taken by surprise by the actual existence of unexpected rank perjury, for who would expect that an individual would attempt to swear away the
337 Wyandotte county records, as did Mr. Bartlett? And the accident of loss in not being able to find the originals of Exhibits N and O at the trial term, the accident of their loss and their discovery as newly discovered evidence which the party was unable to produce at the trial thoroughly completed the grounds for a new trial, provided it be true, as the plaintiffs below supposed, that the receipt of such money assisted in laying the grounds of plaintiffs' theory of abandonment or operated as an estop-el in any way to prevent the party receiving such redemption money or his subsequent grantees from setting up any other title which he might have to such land, all of which matter has been discussed in the former

brief to court below, under the head of "Abandonment of title," pages 12, 13, under which is cited—

Cooper *vs.* Brashley, 72 Pennsylvania, 252.

The 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 48th, 49th assignments for error stand upon the same ground.

See Carithers *vs.* Weaver, 7 Kas., 110.
See Chapman *vs.* Casebolt, 8 Kas., 399.
Holbrook *vs.* Nicol, 36 Ill., 161.
Seward *vs.* Cease, 50 Ill., 228.
Cairo & Fulton R. R. Co. *vs.* Titus, 32 N. J. Sq., 397.
Girardy *vs.* Bessman, 62 Ga., 654.
Protection Life Ins. Co. *vs.* Dill, 91 Ill., 174.

Also as to competency of Bartlett's testimony fixing time of receipt of redemption money, other matters as to what tax records contained, etc., etc.

See Downing *vs.* Haxton, 21 Kas., 178.

A certified copy of such records must be obtained.

Bemis *vs.* Becker, 1 Kas., 226.
State *vs.* Ruth, 21 Kas., 583.

The questions suggested above must naturally all be considered together. The finding of possession is founded upon a theory of abandonment which stands upon matters of opinion. There was no actual abandonment by the grantors of defendants below, but the questions and propositions advanced by the plaintiffs below *was* whether the naked fact that a man's opinion that he had no title created a constructive abandonment of title in favor of some adverse claimant. There is nothing in the evidence anywhere, not a syllable, to show why Cobb and Bartlett had doubts about the title. It might have been the defects in the deed to Snyder from James of 1869, in the defect of beginning at the southwest corner of the Joy tract instead of the northwest corner, or it might have been on account of a hundred other things, as it appears by the tax records that the lands were outstanding in the hands of tax-title purchasers. See pages 410, 420. The mere proof, if even it was proved, "that Cobb and Bartlett had doubts about their title" raised no inference of abandonment in favor of Traber.

IX.

The Points Raised in the 33rd Assignment for Error Form Grounds for a Separate Discussion.

The object aimed at by the plaintiffs below in asking the question as given in the assignment and in following up the inquiry was to prove that J. M. Mason, who is joined as one of the defendants, had something to do with procuring the deed to this tract from the Cobbs and Bartlett with a view to make it appear that Mason was the agent of McAlpine before such purchase with the ultimate

object of bringing home notice to said McAlpine, through his agent, Mason, that the Cobbs and Bartlett made no claim of title and did not believe that they had any title.

And while the plaintiffs below utterly failed to make such proof, even through their witness, Alden—see evidence of Alden, pages 568, 574, in which connection see McAlpine's evidence, page 576—

yet it was in its nature tending to prejudice the mind of the
338 court and was therefore incompetent and irrelevant and ought to have been excluded under the objections, it being intended by the plaintiffs below in support of their abandonment theory. See III, V, VI, and pages 12, 13, defendants' brief below.

The 34th, 35th, 36th, 37th, and 38th assignments may also be considered in this connection.

X.

The court erred in overruling the defendants below in their objections to the records offered in evidence by the plaintiffs below as suggested and referred to in the 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 80th, 81st, 82nd, and 83rd assignments for error, as the plaintiffs made no specified objection to the tax-title deeds of defendants below, except the general objection as stated at page- 407, 408; the tax deed to C. I. Richards dated October 18, 1875, objected to only on the ground of incompetency or insufficiency of description, and the tax deed to J. C. Douglass objected to on the general grounds of incompetency.

Now, clearly the court should have overruled the objection made to the C. I. Richards deed, for by the description in the deed—and that is the only point assailed under this objection—the deed is correct. The description is sufficiently correct to recover the lands in controversy. See deed referred to, page 410.

And as to the other deed mentioned, the Douglass tax deed, it is declared by the statute—see sec. 112, chap. 107, of Statutes of 1868—that such tax deed is *prima facie* evidence of all proceedings, etc. See also sec. 113.

What we claim is that the plaintiffs utterly failed to lay any grounds whereby they could go behind such tax deed and show error in any prior proceedings. If they had desired to object to such tax deed on other grounds than the general grounds mentioned, they should have specified such grounds.

This matter of tax title has been pretty thoroughly discussed on its merits in the defendants' former brief below under the head of tax-title matters, pages 22–23; see also—

Reinhart *vs.* State, 14 Kas., 318.

The evidence objected to as suggested in the 46th assignment is also incompetent on other grounds. By reference to the context at O, page 615, it will be seen that the files introduced from May 1st back to March 13th, 1869, are alleged not to contain the description desired. True enough, nor should they; for by reference to the deed pursuant to the sale for this year it will be observed

that plaintiffs below should look into the files of June of that year for the advertisement of such sale, and in introducing files of March and April they shoot wide of the mark.

This is clearly error, and the finding of the court at A, page 678, is a consummation of the blunder.

XI.

The court erred in overruling the objection of defendants below to the reading in evidence by plaintiffs below of the certain record of the release as referred to under the 50th assignment for error.

The object aimed at by the plaintiffs below in introducing this evidence was to sustain the certain specious idea conceived by the plaintiffs below of a theory that D. E. James ratified the otherwise void carte-blanche deed of 1864 mentioned by Dr. Wood in his evidence, pages 180–195. See deed, 198, 199. The subject referred to has already been pretty thoroughly discussed in defendants' brief below under the head of "ratification," pages 20, 21; bankrupt proceedings, pages 13–18; *res adjudicata*, 17, 18; election, page- 19, 20; miscellaneous, page- 21, 22.

339 As to whether this evidence is competent at all in any point of view depends on whether the grounds taken under the above-mentioned heads of argument are correct, and also it is dependent on how this court shall view and consider the points indicated by Roman numerals in this brief.

But for the present leaving this questions to the discussions under other heads to which they have been assigned and considering for the sake of argument that the doors are again open to discuss the pivotal question in this case whether the property sold to Byron Judd at the bankrupt sale belonged to the estate of the bankrupt—

We simply find what? Why, a title bond dated in 1860 giving Snyder, in Segar's name, an undivided ten (10) acres in a certain tract of land of over 200 acres. 152.

We look again and we see Snyder filing a voluntary petition in bankruptcy assuming and making oath that he has no assets. 225.

Later on, 1868, he receives his discharge under the continuation of the pretense.

Again in 1869 we look and the record at the office of the register of deeds shows that Snyder has been playing false, has been concealing a right to 10 acres of land in the name of his brother-in-law, Segar, ever since 1860; has carried this secret plunder through the bankrupt court and procured his discharge by falsehood and perjury.

He had attempted to locate to himself a 6-acre tract of land along the river by filling in a carte-blanche deed he held since 1864. Forgery is no greater crime than perjury.

The grantor, James, repudiates this transaction, this location. It complicates his prior arrangement with Joy. James compels Snyder to correct the record so that it shall show only four acres in Snyder's name, and that is done as a final settlement with Snyder for all the rights Snyder held under the title bond of 1860 and carte-blanche deed of 1864. 152, 198.

But because of this fraud of Snyder and because he had been holding this right to land concealed all through the long years from 1860 to 1869 he had no final partition between him and James until in 1869, and because this grant of partition between Snyder and James is dated in 1869, partitioning the rights of Snyder under the title bond of 1860 and carte-blanche instrument of 1864, the plaintiffs say this does not belong to the estate of the bankrupt.

Why does it not belong to the estate of the bank rupt?

There is not a syllable of evidence to sustain the idea that it is a new purchase with private funds of Snyder acquired after the bankruptcy.

There may be said to be two petitions for bankruptcy in this case—the original voluntary petition in bankruptcy, filed in 1868, the other an involuntary petition which Snyder resisted, filed in 1870 by Norman, under which Snyder was again decreed to be a bankrupt and his assets subjected to the payment of Norman's debt.

Whether or not the court will or ought to construe everything as referable to the second bankruptcy when the old case was simply reinstated on the docket of the court as a case in bankruptcy makes little difference to the inquiries in this case. It is clear that the equitable right to this property which was the result of the title bond of 1860 and carte-blanche deed of 1864 was assets of the bankrupt, and so the bankrupt court decreed. 297 A–H, 289 to 322.

See *res adjudicata*, defendants' brief below, pages 17, 18; bankrupt proceedings, 13 to 17.

Dr. Wood, whose name appears as an attesting witness to the deed from James to Snyder of 1869, see V. E., pages 65–68 of the record, was in a position to know whereof he spoke. His evidence, which appears from pages 180 to 195, is clear and explicit, in sub-
340 stance as follows: that the four acres upon which the lands in dispute are located was property partitioned in 1869 to Snyder by James in settlement of his rights acquired in 1860 and 1864.

He says Snyder attempted to locate himself some land by using a carte-blanche deed given him by James in 1864, but failed. See brief of the evidence, page- 183, 184, 186, 192.

Plaintiffs below, however, hanging upon a technicality, in the first place, and falsely assuming from the start that it must necessarily follow that because the deed to Snyder was dated in 1869 and the petition in bankruptcy in 1867 that therefore the property was newly acquired property, are knocked entirely off of their presumptive base by the evidence of Dr. Wood, Segar, and the title bond of 1860 and the developements of the carte-blanche deed matter and the inferences arising from the setting aside of the discharge in bankruptcy on account of concealment of assets.

See Dr. Wood's evidence, 180–195.
Dep. of Segar, 154 to 178.
Title bond of 1860, 152 to 153.
Carte-blanche deed, 198 to 199.
Setting aside discharge, 288 to 317.

But, like cunning spiders, no sooner is their web broken and destroyed but they set to work to weave another fabrication.

In spite of the stunning facts they still hope to win their case by hook or by crook. We see them now hanging on to a theory (for e'en though beaten they can argue still) of a ratification of the filling up of the carte-blanche deed by Snyder, and to that end place great stress upon a certain record of a release which they introduce in evidence, which release is found on page 636, in words and figures as follows, viz:

"In consideration of one dollar to me in hand paid and the absolute fulfillment of the within bond by conveyance of six acres of land to Joseph E. Snyder by deed dated July 27th, 1864, and recorded on the 23rd October, 1868, in Liber L of Deeds, on pages 135 and 136, in the office of the register of deeds in and for the county of Wyandotte, State of Kansas, this bond recorded in said office, in Record A, page 462, is hereby cancelled and discharged and absolutely fulfilled.

HENRY R. SEEGAR.

Kansas City, Missouri, April 28, 1869.

Witnesses by—
JOSEPH E. SNYDER.
R. SATHS.

Recorded July 1, A. D. 1869, at 9 o'clock a. m.

JAMES D. CRUISE,
Register of Deeds.

Recorded Book M, page 207, Wyandotte county records."

While immediately following, on page 208 of the records of the office of register of deeds of Wyandotte county, Kas., without any instrument or record between, is the deed of said Snyder and wife to said James, conveying to James the same 6 acres alluded to in the deed of 1864, filed for record at the same hour and minute and evidently by the same person as part of one and the same transaction—see page 210 of this record—while in book of plats of said county records is found a tract marked "Joseph E. Snyder," a location to Snyder in exchange for his former rights under former agreements of 1860, 1864, the deed of 1864, filled up by Snyder in the absence of James, having been recorded some time previous, on October 23rd, 1868, in Book L, page 135, said county records—see this record, page- 198, 199—and the deed with which it formed a complication or conflict, the deed from James to Joy, was recorded March 20, 1869, in said county records. See this record, 57–62.

Now, plaintiffs insist that because the satisfaction of the title bond, a copy of which is above set forth, refers to the deed of 1864, with this language, viz: "In consideration of one dollar to me in
341 hand and the absolute fulfillment of the title bond" (referring then specifically to the 6-acre deed, dated in 1864), that this is, of itself, conclusive proof that James ratified the deed to Snyder of 1864.

We differ with the learned counsel upon the other side in the case materially. We claim, on the contrary, that the consideration mentioned in a writing of this kind does not estop the parties from showing the actual consideration, though it be different or more extensive than the one mentioned, and that especially when a nominal consideration of one dollar is mentioned, as in this case, that it is understood that the fiction of one dollar was not the actual consideration, but only stands as a representative of the real consideration, which may be proven *aliunde*.

It has been asserted by the plaintiffs below that Mr. James wrote this release upon the title bond, and I see the court has found in accordance with this assertion. See D, page 651, of this record.

I also see that the court has made another finding, at E, page 652, "that the bond assignment and instrument signed by Segar were all there when said Segar signed and delivered to said D. E. James," based upon another assertion of plaintiffs below, but the most careful search of this record will fail to disclose the evidence upon which such assertions and findings are based. These are errors.

Seegar in his evidence shows that he thought he was signing quitclaim deed. Page 166, B.

It is probably true, however, that these assertions and findings have very little to do with the main question. The only question is whether the statement of a consideration of one dollar and other considerations specifically mentioned is a conclusive or disputable presumption.

Defendants below claim that in view of the circumstances of this case it is not conclusive that the real consideration may be proven.

That all the facts in this case go to show conclusively that the real ultimate consideration for the release of the title bond was the 4-acre location of 1869.

What difference does it make to the consideration of this case whether or not James chose to ratify this carte-blanche location for an instant to undo it in the same instant by taking a quitclaim deed from Snyder to himself, and in the next instant delivering a deed to Snyder of 4 acres in exchange for all the rights of Snyder previously acquired?

Seegar says it was an exchange. Page 158–1.

Dr. Wood testifies that it was an exchange. 185–1–2; 188–3; 189, 186; 2, 191—1, 2, 3, 4. All the circumstances of the case show it.

The release, quitclaim from Snyder to James, and 4-acre location to Snyder were all dated in April, were evidently part of one and the same transaction, and, even if James did ratify the deed of 1864 for an instant and the substance of the transaction was an exchange, there is no doubt but the principles enunciated in Cook *vs.* Tullis, 18 Wallace, 332, will apply. See former brief to court below, page 15.

Admit the assertion of the plaintiffs below, admit that the deed of 1864 was ratified by James (which would be falsifying the record), and it avails the plaintiffs below nothing. We then have the prop-

osition that the 4 acres of 1869 was exchanged for the 6 of 1864, which was exchanged for the 10 of 1860, and yet it will be assets belonging to the estate of the bankrupt, for it is the avails of the property he owned in 1860.

Nowhere in the record have the plaintiffs presumed to assert that this was a new purchase. The record is as silent as a grave upon the subject.

But these questions have already been so thoroughly argued in the former brief to court below that it seems useless to further discuss the subject.

342 The court has not directly and especially found in favor of this theory of ratification, but the inferences from the general finding 18 are that it must have followed these false lights, and this is error. See authorities—

Ruth *vs.* Ford, 9 Kas., 17.

Newell *vs.* Newell, 14 Kas., 206.

The consideration clause in a deed is a non-contractual admission where the consideration mentioned is merely nominal, as one dollar, for instance. It is not even *prima facie* evidence of the true consideration. Such mere recitals may be varied by parol.

Wharton on Ev., 1042–1050.

Under 1048–1049 it is recited that where a nominal consideration is set forth the real consideration may be proved *aliunde*r.

Especially is this true as between third parties.

This is a plain, logical syllogism, and the primitive cause—the title of 1860—is the cause of all intermediate causes, and also of the final result, the location of 4 acres of land to Snyder, where it was finally platted to him in 1869.

XII.

The court erred in overruling the objections of the defendants below to the introduction and reading in evidence of a deed from Henry R. Seegar to Lafayette Traber, dated Sept. 1st, 1878.

See 51st assignment for error.

The only effect this instrument can have is to show that Seegar did not consider his claim to 40 by 298 feet under the Traber title as of much value, since he quitclaimed it for $50. 163.

We do not claim the case should be reversed because the plaintiffs below furnished evidence inferentially supporting our theory of the case that their title was of very little value.

XIII.

Review of the Findings.

Concerning the point raised under the 53rd assignment for error there can be no dispute.

The finding should be that Armstrong conveyed to James an undivided three-eighths of the land in controversy. It will make

considerable difference in the argument of this case whether James owned only an undivided three-eighths of the land in controversy in 1864, when it is alleged the carte-blanche deed was made, or whether he owned the whole of the tract. In regard to the right of this matter see conveyance from Armstrong to James.

36–38 Wood's evidence, 194–2; 195–2, and also refer to defendants' brief below, under head of ratification, pages 20, 21. See also 1, page 1, "statement of facts."

Evidently the court erred and blundered in this matter and considered that James owned the whole and conveyed the entire interest to Snyder, for see 59th assignment of error, referring to finding concerning the carte-blanche deed of 1864, where the court says, F, page 654, that the 6-acre deed dated July 27th, 1864, to Snyder purports to convey the parcel colored yellow, marked Cobb and Bartlett, and what lies between such piece and the Missouri river, running same width below and along the lot marked lot 16, Swope plat D, page 682.

Where in fact, supported as it is by only a three-eighths ($\frac{3}{8}$) title, which is all there was in James in 1864, it purports to convey only an undivided three-eighths ($\frac{3}{8}$). This makes a vast amount of difference in this case.

See argument in defendants' brief below, page- 20, 21; also 6, 7.

Therefore the matters referred to in the 52nd and 59th assignment- for error are erroneous on this ground; but see argument on pages 7–12 of defendants' brief below.

343 These findings are errors and ground for reversal.

XIV.

The court erred in that part of the finding referred to in 53rd assignment of error which states that David E. James gave Snyder verbal authority to fill the carte-blanche deed of 1864. See finding B, 648.

An attempt to give verbal authority in this way to fill a deed "*in futuro*" is void, and there was no sufficient subsequent ratification of such filling in of the deed nor can the certificate of the notary be thus falsified; such filling is a species of forgery. See argument applicable to such matters in defendants' brief below under head of ratifications, pages 20, 21, 6, 7; also in brief by Cobb below. See second, pages 2, 8.

Besides all the above the finding does not stand on any evidence. There is not a syllable of evidence in the record which goes to show that James attempted to give Snyder this authority to fill the deed "whenever Snyder thought it necessary." The only evidence concerning this matter is the evidence of George B. Wood, pages 187–195, and the statement is that the blank was to be filled up when it should be necessary to protect Snyder's interests, not when he should think it necessary. This makes some considerable difference

in the cast of the reason which follows, and shows that in addition to the fact that such authority could not be legally given that such finding is not true as a matter of fact outside of such legal conclusions. See argument in both Mason and Cobb briefs below.

XV.

The court erred in that part of its finding, page 650, which refers to a plat No. 3 in office of register of deeds.

No such plat is mentioned in evidence. Such plat No. 3, as a matter of fact, is the plat of Wyandotte City, and has nothing to do with this case. See copy of plat No. 9 at office of register of deeds, page 682, introduced page 24. See reference to plat 9 in the evidence, 358, 383. No other plat of Kansas City, Kansas, figures in the evidence.

This is error, but it is not more erroneous than many other findings and rulings in this case.

XVI.

The court erred in the matters referred to in the 55th and 56th assignments for error in stating that the consideration in each of the conveyances, viz., from Syder and wife to James and from James to Snyder, respectively, was one dollar. This subject has been thoroughly discussed under XI; also under head of elections and ratifications, pages 20, 21; also page 7, defendants' brief below and Cobb's brief below. See Snyder to James, 210; James to Snyder, evidence of Segar, 158; evidence of Dr. Wood, 180–195, &c.

It is clear from all the facts in the case that the nominal consideration of one dollar was not the true consideration for such conveyance.

The facts are Snyder in 1869, when the 4-acre location came, agreed to cause the title bond of 1869 to be satisfied on the records and to make a quitclaim to relieve the complication he had caused in the Joy purchase as a consideration that James make him a clear title to 4 acres in final partition of his rights. The deed of 1864 did not, when placed upon the records, effect what Snyder supposed it would effect when he made it. It did not operate as a partition. Since referring *it* to its date, it being quitclaim only, it only conveyed a three-eighths ($\frac{3}{8}$) interest and it did not correctly describe lands in existence when it was filed, in 1868, unless it could be referred to the date of filling, in which case it would have described three-eighths ($\frac{3}{8}$) of same lands which on the plat D, 482, are marked Joseph E. Snyder, and upon which are the lands in contro-
344 versy.

Whether the deed of 1869, '65, '68, commencing at the southwest corner, was intended to commence at the northwest corner of the Joy tract is a question with which we are not necessarily obliged to deal in this case.

But we have treated it in argument as though it was as plaintiffs below supposed. If it does not cover the lands in controversy, however, then Snyder had no deed of the lands in controversy,

unless the plat 9 at office of register of deeds—see D, 682—operates as a conveyance or a dedication. Let this be as it may, there is no doubt and can be no doubt, after looking at the evidence of Segar in connection with the plat attached to his deposition, page 154, and studying carefully the evidence of Dr. Wood, pages 180 to 195, but that the lands platted to Snyder on said plat were the result of a partition at some time of the rights of Snydey arising under the title bond of 1860, and that the consideration of such grant to Snyder was not one dollar only, but, as has been stated, if Snyder did not get the lands platted to him in 1869 under his title bond of 1860 he got nothing from his title bond, and the theory that he willingly gave up all his rights under the title bond of 1860, and then paid one dollar newly acquired and newly earned money for a warranty deed for four (4) acres of land, that D. E. James sold him four (4) acres of land upon a city plat for one dollar, and no other consideration entered into this transaction, is too absurd to receive serious consideration.

Upon the proposition that the consideration of a conveyance, especially where the the nominal and merely formal consideration of one dollar is stated, can be proved by parol, see authorities previously cited.

There can be no doubt but that the court erred in these findings, and upon these findings hinge the whole original merits of this case under the question whether the lands in controversy were or were not assets of the bankrupt, provided this question can now be opened over the rights of estoppel, *res adjudicata*, &c.

If these rights of Snyder grew out of or were a sequel in any way of the rights under said title bond of 1860, then this platted land, whether granded to Snyder under the carte-blanche deed of 1864, filed in 1868, or conveyed to him under the deed of 1869, under a mistaken description, or merely platted to him under the former grant of 1860 and 1864, were assets of the bankrupt.

XVI.

Plaintiffs in error know of no evidence to sustain the findings referred to in the 57th and 58th assignments for error concerning who wrote on the title bond of 1860 and where it was. See pages 651, 652 of the Record.

If there is any such evidence it has escaped our notice.

If the court erroneously believed these findings to be true and there is no evidence to sustain them, it may furnish us with some clue to the reason for introducing the release on page 652 as a finding.

The plaintiffs below introduced this release to sustain their theory of ratification of the deed of 1864, and in this connection see argument at XI, under which reference is made to the ruling of the court overruling objections of defendants below to the introduction of such release in evidence. See 50th assignment for error; also XVI, and other references therein.

XVIII.

The matters suggested in the 59th and 60th findings have been discussed under I and XIII and discussed under former briefs below. See references therein.

345 We have only this to say in addition, that a finding using the language that this finding does, which states, as both of these do, that a certain deed purports to do so and so, does not amount to a finding upon which can be based any general finding or any judgement. It is no finding at all; it is only a mere recital of testimony. We knew before we tried the case that certain evidence purported to show certain things, but whether such evidence effected such object is the very question which the court was asked to decide. But when the court comes in with a statement that such evidence purports to do so and so, we are no wiser than we were before in this conclusion.

See Oliphant *vs.* Atchison Co., 18 Kans., 386.

And we will refer to it again when we come to discuss whether there are really any special findings in this case or any findings upon which a judgements can be based. The same remark is also applicable to the Joy deed, on page 654.

When a lawyer uses the word "purport" in such a connection, he means to avoid saying directly that it has such effect so as not to commit himself. He means thereby to say that such evidence only assumes to do a certain thing, which leaves the question still open whether he does it or not.

If these are what the court calls findings, then truly the judgement is like the Gossamer isles, "the easeless fabric of a dream."

XIX.

The findings referred to in the 61st, 62nd, 63rd, 64th, 65th (this latter being an error in fact on the evidence; see also statement of evidence touching upon it that Snyder did reside 4 weeks in Kansas, page 171, '2) 66th, 67th, 68th, 69th, and 70th, are all erroneous and have been discussed under II and in former brief to court below. Mason's, pages 9 to 12. Cobb's, 10th, page 10.

XX.

The matters referred to as to actual possession under 71st assignment for error have been discussed under III and V, and are also under head of "possession," pages 4, 12, 13 of brief to court below, and 5th, Cobb's brief, page 8, where it will appear that the possession of plaintiffs below, if any they had, was only that of trespassers on the prior possession of others having the right of possession.

Neither possession nor right of possession was shown in favor of plaintiffs below, and the finding of the court as to actual possession had absolutely no evidence to sustain it, since the evidence of a trespass committed is not, in law, evidence of possession in this case. But see further argument under above references.

XXI.

The finding referred to in the 72d assignment is far-fetched, and I know of no evidence to sustain it. Any evidence outside of the records of the bankrupt court to sustain such findings of course must be incompetent.

The petition shows for itself what it contains and is found at 288. And such petition contains a prayer for general relief. See argument by Cobb in brief to court below, 9th, page 9; also former brief to court below, Mason *et al*, 13 to 17. See also page 18, etc.

The matters mentioned in 73rd, 74th, and 75th assignments for error have been already sufficiently discussed in former pages of this brief and in briefs to court below, and the error of these findings will sufficiently appear from the references therein. In regard to the last assignment under 73rd see Zantziger *vs.* Ribble, 2 Md. L. R., 281.

XXII.

In regard to the matter referred to in the 75th assignment, the evidence does not support the finding. The evidence of
346 Traber, 120, '1, '2, is the only thing in support of this finding, in which Traber says he and Norman sold out their claim to Bartlett before the sale. He does not say how long before, nor does it appear in any way when it was, and the finding that it was "before assignee Ess did anything," etc., is error and without foundation. Besides, see affidavit of Norman, page 331, in which said J. L. Norman swears positively that "no bargain or agreement, express or implied, has been made or entered into or in behalf of this deponent to sell, transfer, or dispose of said claim or any part thereof against said bankrupt," etc., etc. This settles the matter of this pretended transfer of the Jaccard claim up to the 14th day of February, 1871, and we have no evidence of a subsequent transfer, and if such transfer was afterwards made it was not made a matter of record.

See 8th, 9th, 10th items (which may be included here).
See introductory part of this brief.
See also argument at pages 18, 19, Mason's brief below, and elsewhere in this brief.

It was by no means essential that Traber and Norman should be parties in interest and parties to the record also in order to have been estopped to set up a title hostile to the one resulting from the proceedings instituted by them. It is sufficient if they were parties to the record. Estoppels affect parties to an action for the use of another.

Pedicord *vs.* Hill, 4 T. B. Mon. (Ky.), 370.
Turner *vs.* Billagram, 2 Cal., 520.
Baker *vs.* Michinard, 17 La. Ann., 251.

By the practice which obtains in Kansas and also in Missouri the real party in interest must be the plaintiff. It must, therefore, be understood that Norman in his proceeding to subject the assets

of the bankrupt to his debt represented and asserted that he was the real party in interest. The record does not show that any other person was substituted in his place or joined with him after he claimed to have assigned the debt. His name remained in the proceedings till the end. He certainly must be estopped from taking advantage of his own wrong and his own violation of law.

XXIII.

The matters stated in the 76th assignment of error as to the consideration paid by McAlpine *has* been discussed at VIII and at page 13, Mason's brief below. This refers to consideration paid by McAlpine for Cobb and Bartlett deed.

XXIV.

The court erred in that part of the finding referred to in the 77th assignment of error that states that "Traber redeemed the lands from tax sale." It is not true, as a matter of fact, that Traber redeemed these lands. He did not pay the money sufficient to redeem, and although the clerk or treasurer made an entry on the tax-sale book showing the lands were redeemed it was a mistake. Now, before a person can redeem he must comply with the law. See sec. 127, Compiled Laws, which was the law then in force so far as this matter is concerned *is*, viz:

"Any owner, his agent or attorney, may at any time within three years from the day of sale and at any time before the execution of the deed redeem any lands or town lot or any part thereof or any interest therein by paying to the treasurer of the county where such land was sold for the use of the purchaser, his heirs and assigns, the amount for which said land was sold and all subsequent taxes and charges thereon paid by the purchaser or his assigns," etc., etc.

Now, it appears by the verbal testimony introduced, and also by the record, and by which the plaintiffs below are bound, that Traber did not pay in the amount required: that he did not "pay all subsequent taxes and charges paid by the purchaser or his
347 assigns;" that he did not redeem; it makes little difference by whose mistake he failed to redeem. The law is specific. He must pay the amount or he does not redeem.

Suppose a mortgage is due at a bank and the cashier receives on deposit only a part of the money due, but under a mistake of fact enters upon his books a minute that the mortgage is satisfied, can any one suppose that the mortgage is thereby cancelled? Certainly not. It is a case of mistake, and no one can hold an advantage obtained under such a mistake; and if Traber knew at the time, and he must have known it, if he made any examination of the matter before him, either that the taxes were not all paid or that he had not fully redeemed, and whenever his attention was called to the error or knowledge brought home to him that he had in fact not paid money enough into the treasurer's hands to satisfy this tax

lien, it was a fraud in him to retain the receipt stating such redemption in full. The certificate would undoubtedly show on its face that he had not in fact paid sufficient money for that purpose.

The pretended redemption was void and could have been cancelled in equity.

The purchaser at tax sale must be reimbursed.

Coleman *vs.* Baker, 24 La., 524.

The finding above alluded to is therefore error. This bears, perhaps, or is supposed to have, an important bearing on the theory of abandonment introduced by plaintiffs below under III, V, VIII.

Also see matter discussed under abandonment of title, pages 12, 13, brief of defendants below.

XXV.

The matters referred to in the 78th assignment of error, as to time when Bartlett drew the redemption money, has been properly discussed at VIII. See also "Possession," pages 12, 13, defendants' brief below.

XXVI.

The matters mentioned in 79th assignment for error, as to opinions of Mrs. Cobb and Mr. Bartlett, have also been sufficiently discussed. See III, V, VIII; also page 13, defendants' brief below, and elsewhere.

XXVII.

The matter under 80th, 81st, 82nd, and 83rd assignments for error are discussed at X. Also see defendants' brief below, pages 22, 23.

XXVIII.

The court erred in its 18th finding, which finds the issues joined for the plaintiffs. See reference in 84th assignment for error. This matter has been already partially discussed under XVIII. See 59th and 60th assignments for error.

And in this connection also may be considered the matters referred to in the 85th, 86th, and 87th assignments for error.

By reference to the certificate of the judge immediately following the petition in error and record, pages 620, 621, 642, 643, and pages 686 to 694, it will be observed that upon the trial of the cause both parties asked, under the statute, for special findings of law and fact separately with a view to except to the decisions and rulings of the court, and that nearly a year before the findings of the court were made and filed that defendants below specially designated and pointed out the questions of fact and of law and questions on admissions of evidence upon which they desired the court to find and rule, due notice of which, as will appear, was served with a copy of such questions of law, fact, and rulings upon the attorneys of plaintiffs below within the time fixed by the court and a copy of the same questions presented to the court prior to the April term of 1881.

By reference to the findings upon pages 644 to 682, it will be seen that the court ignored this request and did not find on the questions presented to the court, nor did the court find on many
348 other issuable questions presented in the case, and virtually made no special findings whatever upon which could be predicated the general finding No. 18, above mentioned.

It will be observed on a careful examination of such findings that they are little more than recitals of evidence. See Oliphant *vs.* Atchison Co., 18 Kas., 169.

That in no case does the court find on any special matter of importance in the case, but avoids all vital and really important questions and merely rehashes the evidence, and then superficially makes the general finding that "the court finds that the issues joined for the plaintiffs" and then follows this with the conclusion of law No. 19 and judgement.

We claim that in so doing the court committed substantial error and that the same is ground for reversal.

McCanliss *vs.* Kelsey, 16 Kas., 557.
Briggs *vs.* Eggan, 17 Kas., 589.
Everett *vs.* Lusk, 19 Kas., 195.
Typer *vs.* Sooy, 19 Kas., 593.
Watterson *vs.* Kirkwood, 17 Kas., 9.

XXIX.

The court erred in overruling the motion for a new trial and in rendering judgement. See 88th and 89th assignments for error. See motion for new trial, pages 694 to 703; overruling same, 704; judgement, 704–707.

The matter of motion for new trial and reasons for same has already been discussed at some length under VIII and XXV. All the grounds mentioned in the motion for a new trial have been mentioned in above brief and briefs below.

Besides there are many facts outside of the record that the court might perhaps judiciously notice. The record discloses that this case was taken under long advisement. We will not venture to state why this was done. It might not be proper for us to enter into the discussion of the motives that governed the court in his decision. The record findings and opinions bear upon their face the evidence of their own condemnation. In the propositions of law and fact and in the theory of plaintiffs below numerous glaring errors and inconsistencies are disclosed under the veil of sophistry. What was intended to be a skillful argument in favor of a finding for the plaintiffs below, in our humble opinion, is but a badly executed job of forensic butchery; but it appears to us that the findings and opinions of the court below are praiseworthy in one point of view, and that the gates are left ajar so that the supreme court is at liberty to walk through the whole field of inquiry.

Respectfully submitted.

JAMES M. MASON,
Of Counsel for Plaintiffs in Error.

Brief and Index to Evidence.

1st, testimony of plaintiffs.

Lafayette Traber, Witness.

"I was the grantor in the two sheriff deeds read in evidence." 101–1.

I have here a lease made by myself to one Anton Hoenf, which I see is not dated, but it was made about the time of another lease by myself to William Jones, which is dated November 26, 1878, for that portion of the tract in controversy then occupied by Jones. He, I found, had put a house on the premises and was just moving into it. 101–1; 102–1.

The other lease, the one to Hoenf, was for another piece of ground lying southwest of the piece Jones had and on which there was a cabin. 102.

Mr. Tourtelott had a house and tenant on the piece of ground lying along what would have been the extension of Wood
349 street and close to the tract occupied by Jones (see A, plat D) at the time he purchased. 102–2.

Norman had an equitable interest in the property. He, acting for both of us, made the sale to Tourtelott. 103–1.

Location of Tourtelott's house indicated at A, Jones' house at B, Hoenf's house at E, plat D, and Taylor's house at C. See 104–1, 105–1, plat D, 682.

I made three written leases—one to Taylor, one to Jones, and one to Hoenf. 105–2.

I drew the leases to cover the ground that each occupied to keep them from setting up any adverse claim to the property. 106–1.

At the time the lease was made to Jones there was no enclosure there except a little fence running back towards James street about 52 feet.

I don't know whether the German had any enclosure or not. 106–2.

I made any kind of terms with them I could, because they went there without my permission, in the first place. All the leases were made in 1878—no; I think Taylor's lease was made after that. 106–3.

The tenant put in by Tourtelott was northeasterly of Wood street, point A, plat D. 107–1.

I do not know anything about the defendants in this case getting the tenants out of possession or their entering into possession. I saw a rather primitive fence built around of round sycamore poles enclosed that portion of the 180 by 289 feet not covered by these leases. I don't know how many feet Tourtelott had. 109, 110–1.

I don't know whether the lands covered by the Hoenf lease were in the alley or not. I don't know that there is any alley there at all. 110–2. I don't know how much of the 50 feet was on the litigated claim. 101, 3–4.

The only means I had of locating the property in dispute was by the outlines of recent improvements. 110, 1–2–3–4.

I do not know how the tenants came to leave the lands. 110–5. I do not know but what the defendants found it vacant. 111–1.

Mr. Norman had an equitable interest in the land; he owned a moiety. 11–2.

We were partners in the abstract business in 1871, when the Snyder bankruptcy proceedings occurred. 111–3.

I knew that Cobb and Bartlett claimed title to that land under that bankrupt sale. I knew that Mr. Cobb and Mr. Bartlett claimed that piece of property by a description, which I knew to be erroneous, and which Mr. Cobb himself, before he died, knew to be erroneous. 115–1.

I think the description in the bankrupt sale does not cover the two acres. 116–1. I examined the title myself before I bought. 116–2, 117–1.

These parties did not come to me to make the leases. I found them there. Jones claimed to be occupying under some woman living near by. Jones claimed to have 25 feet there. 113, 1–2–3.

This six (6) acres is the only ground, as I understand it, that was claimed to be a part of the estate of Joseph E. Snyder in bankruptcy. 117–2; *vide*, 115–1.

After Snyder's discharge in bankruptcy that deed which Mr. Mason says was executed in blank (D, 198–199) was filled up. That showed six (6) acres in him, which is outside of the two acres entirely. 117–A.

So the petition to the bankrupt court was to set aside the original deed (6-acre deed) (D, 198–199), and that deed was set aside. 118–1 repe-d; 121–2.

NOTE.—Under 118–1 witness speaks of the bankruptcy deed to Cobb and Bartlett. There was no such deed. Page 117–A Traber says that he had nothing to do with the bankrupt sale directly. All there was about it was he knew that all they were entitled to under the bankrupt proceeding was what Snyder had through
350 conveyance by James; don't know the date of conveyance; says he refers to the four-acre deed.

This admits the whole case.

"Norman and I owned a judgment together, and in the bankrupt proceedings sought to have property subjected to our claim (*i. e.*, the Jaccard claim). We got our money before the land was sold. We assigned our judgment to Bartlett for so much money. 120, 1–2.

In the application to set aside the discharge in bankruptcy Norman proceeded in his own name and acted as my trustee. I took the deed under the attachment sale in my own name, and Norman owned one-half (½) and I acted as his trustee. 121–1.

Tourtelott's Evidence.

I am one of the plaintiffs in this suit. 127–1.

I arranged to purchase these premises the last of February or first of March, 1879. 128–1.

I put Rhody on the land; he put up a house, fenced off a small piece at A, plat D. 129, 2–3. I took steps to take possession of the remainder of the tract by telling Rhody he might look after it. 131–1, 143–1.

This was after I got my deed. 134–1. After I got my deed from Traber, March 10, 1879, I had four tenants—Rhody, Jones, Taylor, and Hoenf. Taylor and Jones remained till August or longer. 131, 2, 132–1, *vide* evidence of Rhody, 133. They came down to the packing-house and reported and then left. 133–1.

When I bought Norman told me that Cobb and Bartlett had made a pretense of title—"had made a claim." I went to Pratt, Brumback and Ferry for advice. 137–1, 139–1, 140, 1–2, 141–1.

I told the negro to go on after suit was commenced and after I alleged defendants were in possession. 137–2.

Rhody.

Went on and built house and enclosed 24 or 25 feet fronting on Wood St., and 45 or 50 feet deep. He told me to look after the rest while I was there. 142–1. Question. When did he tell you that? Answer. About the latter part of March, 1879. 143–1. Right away afterward I received a three days' notice to leave the grounds. Mr. Mason gave me the notice. 145.

Rhody does not swear positively that Altop was not there when he went there. Cannot tell whether the house was the same as alleged to have been occupied by Jones. Does not know whether Altop went into possession in 1877. Note, page 145.

Tourtelott gave me rent gratis. —. You were looking after the whole business, claiming possession of the whole? Answer. Yes, sir. 147, 1–2. He didn't tell me to keep these defendants away. I don't know anything about that. 148, 147–2.

Altop lived between me and Kaw river, on the same side of Wood street, about 25 feet away. Mr. Mason put a house up right on towards Kaw river from Altop's house, on same side of Wood street. I lived on the corner. 149.

Henry R. Seegar.

I found title bond in my safe. 156–1, 164–1. Under the title bond of 1860 Snyder had ten (10) acres. James gave Snyder six (6) acres instead of the ten (10). 172–1, 157–1–2. Snyder got four (4) acres in exchange for his six (6) acres. 158–1. That 4 acres marked on the plat as Traber, Cobb, and Bartlett. 172–2. It is south of the bridge next to Swope's. 158–1. I understood this to be in final

settlement between Snyder and James. 173–1. It was on the west side of James street. Page 158–2.

See plat attached by witness, 154, 170–1. I have never heard that Snyder got anything else under his final settlement with James except this four (4) acres. 173–2. I heard he got that. I
351 heard it when Traber told me that he had got land over there. 173–3–4. See also plat D, Wood's evidence, 189–1. Plat, page 682.

I think Snyder put the title bond in my name to save it for himself because he was in debt—bankrupt—had failed. 159–1. I knew he was in failing circumstances. I found out about his failing circumstances in 1862 from the title bond. 160–1. He told me about his bankrupt and insolvent condition in 1862, of course. 160–2. I heard he filed a petition in bankruptcy. He was not in with me then. 160–3. About the time he went into bankruptcy I heard of it accidentally. 161–1. I believe I saw it in the paper. 161–1. I think I saw it in the Kansas City "Journal." 161–2. I took the "Journal." 161–2.

Welland was once a relative of the family. 162–1. Snyder went to Memphis about seven (7) years ago; between six (6) and seven (7) years, I think. 162–2. Between six (6) and seven (7) years. 171–2.

I authorized Traber to bring suit for me. He said Snyder had two acres over there and I could bring suit just as well, so I authorized him that he would have to pay all costs and I would get something. 163–1. I was to give Traber and Norman half (1–2). 163–2. For my interest in that thing I got 40 feet front by 198 or 298 feet long. 163–3. I got $50 cash finally for that piece. 163–4. Mr. Traber made me a deed for it, and I afterwards sold it to him for $50. (This shows how much Segar thought of the Traber title.)

Joseph E. Snyder is dead. 163–5. Died in July, 1879, in Memphis. 163–6. He became my brother-in-law in 1857. 164–1.

I found a title bond in my safe accidentally in 1882 for ten (10) acres made out to me, between Missouri river and State line. It was for the benefit of Joseph E. Snyder. 156–1. Snyder made a trade with Gladden for his claim in the bottom for 80 acres in Garden City, and Snyder trad- his claim to James for the ten (10) acres. 165–1. See, also, 157, 1–2.

The six (6) acres were given to Snyder instead of the ten (10) because of the $50 mortgage on the land; that is what I understood. 166–1. According to the handwriting James must have had the bond transferred to me. It was written by James. 166, 2–A–1.

When I saw that bond I asked Snyder what that bond means. He said he could not keep the property in his own name and he wanted me to hold it for his use and benefit. Snyder said just let it lie in the safe. 166–2. I signed a quitclaim deed in release of the title bond and gave it to Mr. James. 166–B–1.

Snyder told me that he had to give two (2) acres of the six (6) for riprapping. This was at the time the railroad commenced riprapping. 169–1, 189. Remark.—That would seem to indicate that the original six (6) acres was at the time supposed to include all of the latter four (4) acres, according to theory of defendants, and

that the attempted locating of Snyder of the six (6) acres was a mistake.

Snyder was living in Memphis, Tennessee, at the time I brought suit in attachment. 171–1.

Evidence of G. B. Wood.

There was a verbal contract to give Snyder ten (10) acres on the State line between Missouri and Kansas prior to 1863. 181–1. In 1863 James saw fit to change the agreement so that Snyder should have lands over on the Missouri river, between the State line and the mouth of the Kaw river. 182–1. The land was then undivided and held in common. 194–2. Afterwards, in 1867, partition was made and lands were allotted to Mr. James in severalty on which this land in controversy is situated. 183–1.

It became necessary on account of washing away by the Missouri river that the bank should be riprapped. An agreement was entered into between the owners of the lands there and the
352 Hannibal and St. Joseph Railroad Company, through James F. Joy, to grant lands to said Joy and company if they would riprap the bank so as to save the rest of the lands, and James agreed to give ten acres along the river front of his land to Joy and company. Other owners donated lands. 183–2. After this contract was made and the deed delivered in escrow Mr. James returned home to Michigan. Mr. Snyder had a carte-blanche deed dated back in 1864, blank in name of grantor and description. 183, 184–1, 186–1, 192–1.

In the absence of James he filled in the deed and placed it on record; and he showed it to me. See also 183, 190–1, 191–4. This made a complication with Joy and company. Mr. James, on his return, was very much incensed, indignant. 135, 193–3. To do away with this complication it was arranged with Snyder by James to give Snyder four (4) acres back and entirely off of the Joy tract. That was finally consummated and Snyder did receive the four (4) acres in lieu of the six (6), and the six (6) was to be in lieu of the ten (10) on the State line. 183–2, 185–2, 188–3, 189–1. Joy tract identified from plat. Also four (4) acres marked Joseph E. Snyder. 188–2, 189–1. Exhibit D is the carte-blanche deed alluded to identified by the record. Proof of loss of the original. See page 196; see also 191–1. Exchange of 4 for 6 acres, 191–1, 191–2, 185–2, 188–3, 189–1, 191–3–4, 185–1, 186–1. The 6 acres he was to have on the bank was the consideration for the 4. 191–2.

The carte-blanche deed when filled up by Snyder covered northwesterly end of the 10 acres lying on the Missouri river. Further proofs of identity. See page 187, 187–1. Snyder filled in the blank deed in the fall of 1868, after the Joy deed had been delivered in escrow. 190–1, 193–2, 195–1, 188–1. The reason he did not get 6 acres was because he had to stand 2 acres for the washing. 189.

Washing continued from 1858 through 1867 until it was riprapped in 1868 and 1869. Riprapping commenced in the winter; fell in some in spring of 1868. 193–1. Land did not wash away much

after the filling in of the deed. The falling in occurred usually in the spring or summer; not much in the fall or winter. 190–2. I am of the impression they commenced the riprapping in January or February, 1869. I think it was in the winter. 190–3. About that time they commenced laying stone up at the point. 190–4. This was the conclusion. Snyder was to have 4 acres as a final settlement of his rights under the 10-acre title bond. 191–3. Snyder held a -lank deed as security to be filled with 6 acres. I heard these arrangements made between James and Snyder; I heard them talking together and separately in regard to it. 192–1. He had no authority to fill in any specific 6 acres; not this six (6) acres which he did fill in; the land was then held in common; no particular 6 acres was agreed upon. It was not definitely fixed, because James held the land in common. 194–1–2, 195–2.

Snyder must have got the description from the partition suit. 195–1.

J. B. Sharp.

I was one of the commissioners on partition. There was no prior survey to my knowledge. (200.) No one knew the nature of our report until we brought it in; commissioners kept their consultations to themselves. 201. To same effect see evidence McGrew, pages 202, 203.

Evidence of Experts.

Martin Allen

places the southwest corner of the Joy tract at corner farthest west on the line of James' and Wood's allotments at X, 384.

Walter Hale

indicates same point—X, 386; also states the reasons of change in variation. 2, 386, 387, 388, 389, 390, etc.; cross-examined, 391 to 398. It is plain that the deed of 1869 from James to Snyder, 353 commencing at the southwest corner of the Joy tract, cannot include the lands in controversy. See record, pages 65 to 68. Also shows in this evidence that the bankrupt deed does cover the land in controversy. See record, 356–363.

D. M. Smith,

pages 399, 401, established the same points as the southwest corner of the Joy tract.

R. E. Ely.

Pages 402, 405. The same evidence.

Martin Allen.

Recalled. Pages 406, 407. Same effect. Note.—If the court has any doubt about the correctness of the views of the defendants it should

read the whole of the evidence of these experts. Admitted by parties hereto that Sophia A. Cobb is the widow of S. A. Cobb, deceased; also that S. A. Cobb died in 1878 intestate; that David E. James died in 1872 intestate, leaving a widow, Jennie M. James, and four children, named in the deed introduced in evidence, dated March 11, 1880. S, page 407.

Defendants' Evidence.

E. L. Bartlett.

Altop was in possession at the date of the lease—J, 552—June 18, 1877. See 524–1.

I was acting as attorney for Mr. Bartlett, my father. 524–2, 528–1. This permit (lease) covers the land in controversy. 525. It is bounded on the east by James street, on the west by Armstrong street, as it would be if open. It was the entire tract. 528–1. Alltop remained until a new lease was given—525–2—to a woman named Street, in the fall of 1877 or spring of 1878. See lease, 553, 557, 527–2–3.

Mrs. Street remained there until the lease was taken up. 526–1. Neither Rhody, Taylor, or Jones, or any one else, except Mr. Alltop and Mrs. Street, had any authority from me to go on there. 526–2. Mr. Alltop occupied as tenant of Cobb and Bartlett. 526–2. He was put on there for that purpose. 516–2. I leased the entire tract to Mrs. Street, the same land that was bought by Judd at bankrupt sale and by him sold to Cobb and Bartlett. 526–3. Altop put improvements on the land back of Wood street, between Wood street and the Kaw river, and I think he remained there until the spring of 1878. Then I made a lease to Mrs. Street in writing. She remained one year and then the lease was renewed. She built a house of her own. 527–3.

There was a question between Traber and those claiming under him and Cobb and Bartlett, in 1877, as to the title to the lands referred to, and had been since 1867. 528, 529.

Bartlett and Cobb proposed a compromise to Traber and those claiming under him of all matters in dispute, by which they (Traber's party) abandoned all claim to lands west of Wood, between Wood street and the Kaw river, and proposed that in consideration of that he abandoned claim to that between Wood and James streets. That was the proposition. It was not consummated. That proposition was made in 1878. In August of that year Mr. Cobb died. Mrs. Cobb made a similar proposition to Traber and received no reply to it. I was told by Mr. Traber that he had sold to Mr. Tourtelott on the day he got that proposition. Pages 530, 536–2, 537–1. He (doubtful who the "he" applies to) came to the conclusion he had no title. I do not know what Mr. Cobb said to Mr. Traber, but that is what I heard him say. I know, also, that my father proposed to exchange front for rear lots there. Page 532.

There was no definite proposal to exchange front for rear lots. 533–1. A proposition proposing to make some arrangements to

divide the property on Wood street was pending when the land was sold to McAlpine. 533–2.

I told him (McAlpine) I would give a quitclaim deed to
354 anything for $90, and so I did, and Mrs. Cobb did. That is the conveyance made in 1879. 534–1.

Question by plaintiffs. Did you tell McAlpine at the time that you made no claim to the property for your father or Mr. Cobb?

Answer. Yes, sir. 535–1.

At the time of this conveyance Mrs. Street was in possession of the whole 4 acres. She had a house and a fence enclosing it. The first lease is dated October 21, 1878. See pages 553, 557. It was renewed. 535–2.

What Mr. Cobb said to me about his title was pending the proposition to compromise. The reason he was willing to make this arrangement with Traber was partly because he did not think he had a good title. 536–1.

We never consented that Mrs. Street or Mr. Alltop should turn it over to Traber or Tourtelott; we never abandoned it in that way. We did not turn it over to these plaintiffs or anybody else except the parties to whom we sold. 565–3, 566–1. Mrs. Street did not leave the premises until after we sold. She and her successors are on the premises now. She occupied under us, under this lease, at the time we deeded to McAlpine. They were in possession of the entire premises, though they enclosed only a part. There was a controversy as to where the westerly line of the six acres next to Snyder was. 537–2 to 538–1.

Statement of Bartlett as to What Came Up in the County Treasurer's Office.—Pages 533, 534.

Frank Cobb, brother of S. A. Cobb, bought a tax certificate on this disputed land, and McAlpine, as the treasurer of the county, failed to endorse on his books a part of the taxes paid on such certificate, whereby, when Traber came to redeem the amount paid in to the treasurer succeeding McAlpine, there was a deficit of about $90. I asked McAlpine what he would do about it. McAlpine said he would assume the collection of that amount and pay me the proportionate amount of $90, provided Mrs. Cobb and my father would give him a quitclaim deed. I told him I would give a quitclaim deed to anything for $90, and so I did and Mrs. Cobb did. That is the conveyance of 1879.

Statement of McAlpine as to What Came Up in the County Treasurer's Office.—Pages 538, 539.

When I was county treasurer I made a mistake that Mr. Bartlett referred to. Traber and Norman came in to redeem with this tax left out by me. It was marked paid on the tax-roll.

I made Mr. Bartlett a proposition in these words: "You or Cobb and Bartlett have been fighting this thing several years and have never come to any conclusion yet. If you will give me a quitclaim deed from your father and Mrs. Cobb I will pay you so much money." He said he would if he could get Mrs. Cobb to sign it. He made no claim then that he had abandoned the title whatever or at any other time to my knowledge. I was not informed of the pending proposition. I just knew there had been a contest about it for years. He made the deed the next day, I think, and I paid him the money.

McAlpine's Evidence.

Mr. Mason was not interested with me in the property at the time I purchased. 541–1, 542–2. He has a half interest now. 542–2.

J. M. Mason's Evidence.

When I became interested in this property I found a house on the corner of Wood street and the alley which forms the northerly line of Kansas City, Kansas, occupied by Mr. Rhody. He had about 25 by 54 or 44 feet, whatever is the correct measurement (at A). He is in possession of that now. That is the land excepted in this suit. Mr. Altop had 25 feet immediately north of that (at B).
355 He was in and had a house there, and there was nobody else on the easterly side of Wood street (on this land in suit), but on the other side of Wood street a house was located, partly in the alley and partly on the southerly line of the land in litigation. He had in his lease, which was the Hoenf lease, 50 feet square, and a portion of the 50 feet was not on this land; perhaps two-thirds of it was (at E, plat D) on the land in controversy.

In addition to that a Mr. Taylor was occupying 50 feet right immediately north of Mr. Hoenf (at C) and there had been a man squatting on a portion of the land north of that. I asked him who he was holding under and he said he had no tenancy, and shortly after I went there he left the land.

Mrs. Street was there and was occupying when I first went there. A little bit of the land in controversy was within her enclosure (at F). Soon after I fenced the land I put the house there. Nobody troubled me or made any objections to my putting a fence there. Mr. Altop left directly after I moved upon the land. He turned over possession to me. He vacated the land.

Mrs. Street knew that I had bought the land from the parties she was renting from. She made no objection to my taking possession under my deed. I took possession under the McAlpine deed, pages 543, 544, 545, 546. It was about July, 1879, that I took possession. I did not consider Mrs. Street in possession of the vacant land. 547–2. I am going entirely on the evidence of Mr. Bartlett as to that. See 547–2; see 535–2. I built a fence all around the land not enclosed. 549–1.

I think it is a question of law whether I got possession then or got it from Cobb and Bartlett. 549–1.

Plaintiffs' evidence resumed.

E. L. Bartlett's Evidence.

The tax certificates previously spoken of were bought by Frank Cobb for the benefit of Cobb and Bartlett; were purchased at a sale with the money of Cobb and Bartlett and were afterwards assigned by Frank Cobb to A. B. Bartlett and S. A. Cobb. 561–1–2.

We (that is, myself, as attorney for A. B. Bartlett, and the widow and heirs of S. A. Cobb) did not take the money paid in by Traber for redemption for some time, for the reason we thought it would interfere with our title. 562–1.

Finally we concluded to take the money and get what we could

out of the thing. 562–1. We took the money deposited in the treasurer's office and took the money paid by McAlpine and divided it equally. 562–1.

At the time we drew the money the certificate was assigned to my father by Frank Cobb. That was before we deeded to McAlpine. 561–1.

Mrs. Cobb, myself, and Alden, acting as attorneys in the case, concluded in our legal mind that it was best to abandon the property. That was our legal opinion. 564–1, 565–1. It was after that I saw fit to make a deed to McAlpine. 565–2, 566–2.

Henry L. Alden's Evidence.

I do not recollect any conversation with Mr. Mason before the execution of the McAlpine deed. 570–1, 571–1. I stated to Mr. Mason that the Cobb heirs, Mrs. Cobb particularly, had come to the conclusion that they had no title to these two acres of land that Traber was claiming. 571–2. I do not recollect when the deed was signed. I was not present when it was signed or delivered. 572–1. I think it was before Mrs. Cobb got her part of the money. I was not present when the money was paid. 572–2, 574–1.

I do not know whether I told Mr. Mason what I did before the money was paid or the deed was delivered or not. My recollection is not clear. 573–1. I think the conversation with Mason was before the money was paid.

N. McAlpine Recalled.

I was county treasurer in 1868. 574–1. I was county
356 treasurer in 1870 at the time these tax-sale certificates were issued. 575–1. During the years 1869 and 1870, while I was treasurer, we advertised in the "Gazette." 575–2. It was after I received the deed from Mrs. Cobb and Mr. Bartlett that Mr. Mason became my agent. 576–1. Prior to that he was not my agent or attorney in any way. He acted as scrivener in drawing the deed; nothing further. 576–2–3.

Before I paid Mrs. Cobb I had not made this contract with Mason as to what he was to have. He was not authorized to act for me until I had paid the money. 577–1. I did not tell Mr. Norman that Mason had importuned me. 578–1. I remember once Mason told me there was an opportunity there and probably a good speculation. 579–1.

Mr. Richards was not present at the time the lands were struck off to him mentioned in the tax certificate. Mr. Douglass paid the money in. 581–1. As to the sale to Douglass, Mr. Douglass was down and he ordered that certificate. The money was paid as soon as I made out the certificate to him—581–2—or before. 582–1.

D. R. Emmons.

I have made search in my office for the advertisements of the delinquent tax-lists for the taxes of 1868 and 1869. I have examined in the places in my office where such things are kept. I cannot find them; they are not in my office. Page 585.

A. N. Moyer.

I am one of the proprietors of the "Wyandotte Gazette." I have the files of the "Wyandotte Gazette," 1869 and 1870. The copy I hold in my hand is a copy of the Gazette for April 21st, 1870.

Mr. PRATT: I will read a description of the property as published in the notice:

J. E. Snyder: Commencing at the northwest corner of the tract conveyed to J. F. Joy by D. E. James, S. 28 degrees 10 minutes E. 200 fe-t, S. 62 degrees 10 minutes W. 580 feet, N. 288 — 10 minutes E. 580 feet, to beginning; 4 a.

Mr. PRATT: The notices in the subsequent issues correspond with the one read.

MOYER resumed: I have the files of the "Gazette" dated Saturday, May 1, 1869, and also the ones back of that. I have the issues of April 24, April 17, April 10, March 27, March 20, and March 13.

Mr. PRATT: We offer the same in evidence and call the attention of the court to the fact that the description is not there at all.

Nicholas McAlpine Recalled.

I was county treasurer in 1872. 626. I made this description in certificate No. 101. I took it either from the tax-roll or the assessment-roll. They were both correct. The money was deposited in my office to purchase a certain amount of tax certificates. He wanted the whole tract or none. I bid them in for Mr. Richards. I was acting for the county in making the sale and was also the agent of Mr. Richards in making the purchase.

In the book offered in evidence (indicating the entry), from the county receipt book, above set out (page 619), the date there (pointing to the column under the words "when dispensed") is the date when the money is paid over to the party holding the tax certificate. O O, page- 619, 628.

William Albright.

I was deputy treasurer in 1879. I made these entries on this county receipt book. O O, page 619. I made all but the signature. I made this entry Sept. 3, 1879. 628. I think the money was paid at those dates. This entry O O in receipt book, page 919, is a correct record. There was something about the certificate being lost, but I did not pay over the money myself. I think Mr. Drought did. The certificate was afterwards found. 630.

357 E. L. BARTLETT recalled:

630. I discovered that this money was there to our credit some time in the spring. I think Mr. Albright called my attention to the fact in the spring of 1879 that there was some amount of money there paid by Mr. Norman, and I went to get it. He said I would have to present the certificate. I made an effort to find the certificate, but could not do so. (In this connection, also, see evidence of Bartlett, 562–1.) And finally I made an affidavit of its loss, which he required, and filed it with him, at the same time giving him a receipt for the money. O O, page 619. Afterwards Mrs. Cobb discovered the certificate and brought it into the treasurer's office, when it was taken up, and I was asked to sign this receipt again on the book, as that was the proper place in which they kept their receipts. (See O O, page 619.) I got the money months before, on making the affidavit of the loss of the tax certificate and signing bond, as the statute requires. N and O, 622–625. I do not recollect having any conversation with Mason in the summer about going up into the treasurer's office "and his remonstrating with me that it might prejudice our title, and asking me not to do so." I recollect no conversation of that kind. I was very anxious to get money at that time whereever I knew there was any coming to me. 632; see, also, pages 561, 565, etc. I have heard the statement of Mr. Mason. It is true in regard to my not paying any heed to his counsel. I had no such conversation with him in regard to drawing that money. 634.

J. M. MASON recalled:

I am very positive that this money was drawn after McAlpine made the purchase, and I have this reason for thinking so: I found out from Mr. Bartlett or somebody told me that they were going to draw that money, and I says to Mr. Bartlett, "I don't think you ought to do that, because it will prejudice the title of the Cobb heirs. It won't affect us, because the title has passed, but it may prejudice the minor heirs of S. A. Cobb, as it may be an inferential admission that Traber has a better title than we have." I think he said to me, "I am going to draw what I can get;" and he went upstairs and did not pay any heed to my counsel. This was after McAlpine had purchased the land, a long time. 632. It was at least two months after he had purchased the land. I would not have had any interest in the matter or made the suggestion myself if I had not been employed by Mr. McAlpine to take care of the title, and I felt an interest in it, because I thought the minor heirs of Cobb would have more chance to recover. In addition to that I will state that it did not have any effect upon the mind of Mr. Bartlett. He did not seem to think that I knew anything about it, and I went, I think, to Mr. Downs and explained the matter to him. I told him I thought it imprudent to draw the money. 634.

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362 District Court, Wyandotte County, Kansas.

GEORGE W. TOURTELOTT and GEORGE P. ALLCUTT, Plaintiffs,
vs.
CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERING, Nicholas McAlpine, James M. Mason and Anne Mason, His Wife, Defendants. } No. 2547.

Brief for defendants.

Nelson Cobb, of counsel for defendants.

Brief "D."

363 District Court, Wyandotte County, Kansas.

GEORGE W. TOURTELOTT and GEORGE P. ALLCUTT, Plaintiffs,
vs.
CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERING, NICHOLAS McAlpine, James M. Mason and Annie Mason, His Wife, Defendants.

Brief for defendants.

This is an action in the nature of an ejectment, and the sole question is whether the evidence shows that the plaintiffs have title and

thereby the right to eject the defendants from the possession of the premises which the plaintiffs by their petition allege that the defendants hold. See ——.

We do not, therefore, in this brief propose to discuss the title of the defendants, though we think it has been clearly shown to be good in another brief of other counsel in this case, but merely propose to review the positions of the able counsel for plaintiffs as to the title which the plaintiffs claim to have shown.

First.

On the 5th day of March, 1860, James (the common source of title) gave to James Gladden a title bond for an undivided ten (10) acres of land in the west half of the southwest quarter of section No. 11 and the east half of the southeast quarter of section No. 10, township No. 11, the conveyance to be made at any time within one year, subject to a ceertain mortgage to Silas Armstrong, and at the same time said Gladden assigned the same to Henry R. Segar, who took and held the same in trust for Snyder.

The bond, the assignment, and the trust were all one transaction and were intended to vest in Snyder an equitable right to the undivided ten (10) acres.

This bond was given for a consideration moving from Snyder (see Dr. Wood's testimony, page 16 of Stenographer's Report), and the reception of the same by Seegar in trust for Snyder gave to Snyder (at least so far as his creditors were concerned) a clear title in equity to ten (10) acres undivided in the above-described land. See ——.

Second.

This undivided interest, as we think, remained until on the *the* 13th of April, 1869, when, in consideration of said ten (10) acres undivided, said James conveyed to Snyder a specific four (4) acres (the land in suit). But the plaintiffs claim that by deed dated March 13, 1869, a specific six (6) acres was substituted for the undivided ten (10) acres for which the bond was given. Was such deed given? We think not. In the year 1864 a blank deed, with the names of David E. James and his wife inserted as grantors and no person as grantee nor any description of property anywhere, was signed by David E. James and wife and delivered to said Snyder, with oral leave to fill it up if necessary for his own protection. See ——.

And in the fall of 1868 said deed was filled in by Snyder covering lands other than those in controversy.

The plaintiffs' counsel insinuate, though not assert, that this is a valid deed, and that it partitions the property and gives to Snyder the six (6) acres therein described in lieu of his undivided ten (10) acres.

This, we say, is a false position for the reasons—

First. That the deed as filled up — Snyder was not the deed of

James and wife nor either of them. It was not a deed, but
364 a mere blank out of which a deed might be made, and the alleged agreement that Snyder might fill it up by inserting the description of the land intended to be conveyed and the grantee was wholly void.

Second. By the laws of Kansas existing at that time and always before and after a conveyance of any interest in real estate must be in writing, signed by the party to be charged thereby or his authorized agent. See sec. 6, chap. 43, General Stat. of Kansas.

Third. By the law of Kansas the power of an attorney to act for his principal in the conveyance of any interest in land must be in writing. See sec. 5 of statute above cited.

Fourth. As the deed was originally no deed, if it acquired any effect it must have been acquired by the filling up done by Snyder and Snyder must have acted as the agent of James in so doing, and he certainly had no written authority, and his act was therefore void, and the deed being before void remained void.

Fifth. Even had Snyder a power of attorney to convey for James his conveyance from James to himself was void, as an agent never has power to convey the property of his principal to himself.

Sixth. The doctrine of the plaintiffs allows any man to convey to himself the property of his neighbor if he can get any one to testify that the owner told him that he might do so or will swear to it himself, which the statute of frauds has undertaken to prevent.

Seventh. But it is claimed by plaintiffs that this deed was ratified; but suppose it to be ratified, it is a ratified nothing; it is but a piece of blank paper (neither describing property nor grantee); it is but the ratification of a nullity and a mere consent that nothing shall remain nothing.

It is true that a deed having in its body the elements of a conveyance and subject for a vice in the consideration or some other defect outside of its terms to be repudiated may be repudiated or ratified by parties affected by its provisions, but a ratification of nothing will never make something of it.

But there is no plausible pretence that said so-called deed ever was ratified.

It is claimed by plaintiffs that the deed was ratified by James in the very act by which he repudiated it and compelled Snyder to reconvey it.

When James returned from Michigan he required Snyder to remove the cloud from his title produced by his action in filling up the pretended deed, and gave to Snyder for all his interest in the land of James, whether under that deed or the title bond for an undivided ten (10) acres, a conveyance of the four (4) acres now in controversy.

The transaction was carried into effect by James deeding to Snyder the four (4) acres in litigation (see Exhibit E in Book of Exhibits) and at the same time taking from said Snyder and wife a deed of the six acres included in said deed made by Snyder to himself. (See Exhibit F.)

And taking from Seegar a release of the bond which he held in trust for Snyder.

To say that this transaction ratified the deed that Snyder made to himself is to say that forcing one to retract what he has unlawfully done is to ratify the unlawful act. In this connection see testimony of George B. Wood and Seegar's release, Ex. G.

365 Most clearly the deed of the four acres was given to Snyder in lieu of all the interest he had in the land to which James held the legal title, and the form of the transaction was of no importance if it effected that object.

At the time of the conveyance of the four (4) acres Snyder clearly had no interest except what he held under the bond for an undivided ten (10) acres, for I think that counsel will not seriously contend that the deed (so called) made by Snyder to himself carried any title whatever without some ratification by the man owning the land proposed to be conveyed. See Ayers *vs.* Probases, 16 Kansas, 175.

The first ratification that they claim is the transaction by which the maker of the deed to himself was compelled to relinquish it.

When the deed of James for the four acres was made there was no right in Snyder or his creditors nor in any one adverse to James except to the undivided ten (10) acres.

Therefore the release of the title bond was the only consideration that James received for the conveyance of four (4) acres, and it is not important what consideration the deed recites, as the real consideration is proved.

Counsel talk about the alleged fact that James did not complain that Snyder had no right to fill the deed to himself, but merely that it complicated as to the riprapping business; but of what significance is that? If he did not choose to adopt a deed that he had never made his reason for not doing so belonged to himself and no man had a right to say, Why do you so? The statute said that as he had made no contract in writing other than the bond for ten (10) acres he had parted with nothing, and as he never did afterwards that is all the court wants to know about it. The statute takes care of the rest. Therefore the ratification fails to ratify.

Eighth. The next ratification discovered by the plaintiffs' counsel is a ratification by the assignee of Snyder in bankruptcy. This is perhaps the most remarkable of modern discoveries. It is to the effect that Ess by selling the six (6) acre parcel of land ratified the conveyance of it by Snyder to Snyder. Now, we think the evidence will show that Ess only assumed two (2) acres of the former six (6) outside of what was included in the four-acre deed, and at the same time that he sold the two (2) acres he also sold that portion of the land covered by the four (4) acre deed, which was held adversely to the supposed title, under the six (6) acre deed, and therefore if he ratified the six (6) acre deed by selling that land he at the same time repudiated the six (6) acre deed by selling the four (4) acres.

This makes a standoff between ratification and repudiation so far as the action of Ess is concerned. If the selling of two acres of land

covered by the six (6) acres deed ratified it, then, *a fortiori*, the selling of the whole four-acre tract ratified the deed of four acres.

We suppose that the officer of a court having process to sell land for the benefit of creditors, whether he be sheriff or assignee, sells the interest of the debtor whatever it is, whether nothing or a fee-simple. He warrants nothing, and the purchaser makes what he can out of it. If there is a title he gets it, and if there is nothing he gets that; and we never heard that a sheriff ratified any deed by selling land.

The claim does not admit of serious discussion, and we dismiss it.

Ninth. We suppose, as plaintiffs' counsel allude to the fact that the name of Snyder appears upon the plat of Kansas City, Kansas, upon the land covered by the six (6) acre deed, the plaintiffs
366 mean to claim that James placed the name upon the six (6) acres tract as described in the plat and thereby ratified the deed filled up by Snyder to himself.

But we think that an examination of the plat in evidence will show that Snyder's name upon the plat is placed upon the ground covered by the four (4) acre deed, though we do not think it a matter of any signification, as that name upon the plat is no part of the plat required by statute to be filed and no agreement between James and Snyder nor any other persons. To sustain their claims of ratification the plaintiffs cite the case of Tucker *vs.* Allen, 16 Kans., 312.

That case bears no analogy to this. In that case Tucker, the common source of title, executed a deed, fully filled up except the grantee's name, which was left blank. It was intended, as the body of the deed clearly shows, to convey one-half ($\frac{1}{2}$) of a body of land intended as a town site, and contains stipulations of the parties—grantor and grantee—to plat the whole tract as a town site, and provided that the odd-numbered lots should be the property of the grantee and the even-numbered lots should remain the property of the grantor.

The consideration of the grant (except a nominal one) was the platting of the town site and the making of certain improvements, locating a depot, &c., by the railroad company, and the grantee was left unnamed for the purpose of allowing the railroad company to name such grantee as it preferred.

The deed was delivered to the engineer of that company and by him filed by the company and by him filled up with the name of Chanute, its engineer (who negotiated the trade), exactly as the grantor intended.

The provisions of the deed were in all respects fulfilled by Chanute as grantee and the railroad company on his behalf, so that the grantor, with knowledge of Chanute being the grantee, actually received the consideration for the conveyance. He bought some of the lots from Chanute; he knew that the deed was in Chanute's possession and filled with his name when he bought of him, and in other ways recognized Chanute as owner under said deed.

The supreme court held that after the filling up of the deed with Chanute's name as so recognized it was equivalent to a delivery by the grantor to Chanute after it was filled up.

The court treated it as a constructive delivery of the deed after it was filled up. See opinion of the court, on pages 319, 320.

In that case the deed when signed was complete, except as to the grantee, and assuming, as the court did, a redelivery of the deed after it was filled up with that name the conveyance was complete.

But in the case at bar, though you concede the grantee to be inserted, there is no operative language in the deed. There is no property described. The deed then would be a mere blank, with a grantor and a grantee named, and nothing else, and we think that we are still allowed to say that a written conveyance of real estate cannot be made without writing.

The court in the case cited went at least to the verge of the law to prevent a fraud, but the court never strains a point to protect a fraud, which the plaintiffs ask it to do. They ask still more—the judicial repeal of a statute to protect a fraud sustained in the bankrupt court by perjury. We have no fears but that the court will say that the six (6) acre deed made by Snyder to himself remains absolutely void.

Third.

If the six-acre deed be void it is plain that at the commencement of the bankruptly proceedings Snyder was in equity the owner of an undivided ten (10) acres of the land of James and James held the legal title for him, subject to partition, and which Snyder could require James to partition and convey to him, and when he
367 filed his petition in bankruptcy he concealed this property and committed perjury in swearing to his petition.

Fourth.

That James made partition with Snyder and gave him four (4) acres for his right in all the lands above described, which is the land in suit.

Fifth.

That the defendants are in possession of this four (4) acres and so admitted by the petition, and the action is to eject them from such possession, which of course must be done, if at all, by paramount title.

That is a title to possession paramount to every one—that is, they must recover, not because the defendants lack title but because the plaintiffs have title.

Sixth.

That Lafayette Traber, who purchased under the attachments against Snyder, could take only such title as Snyder had to convey, and is in no better condition as to title than Snyder was at the time of sale.

Seventh.

At the commencement of the bankruptcy proceedings Snyder had a clear title in equity in an undivided ten (10) acres in the land held by James. This right, of course, passed to the assignee in bankruptcy, who, as the hand of the court, held the same in trust for Snyder's creditors, to be administered in bankruptcy. It was assets of the bankrupt and as such passed to the assignee.

Eighth.

If James gave to Snyder a deed of four specific acres in lieu of the undivided ten (10) acres it was a mere partition and not the acquisition of any new property. It was paid for out of the assets in the bankrupt court and if the bankrupt creditors chose to accept it, as they have, through their assignee, no one had a right to object. The proposition that property acquired by the bankrupt in consideration of bankrupt assets is newly acquired property and to be held exempt from the rights of creditors whose property paid for it does not admit of serious discussion and we dismiss it.

Ninth.

On the 9th of February, 1870, a bill was filed in the court where the bankrupt proceedings were had to set aside the discharge granted to the bankrupt for the fraud of Snyder in wilfully swearing falsely to his inventory and thereby concealing his interest in the said lands held by James.

After full pleadings and trial the court made a decree, pursuant to the prayer of the bill, setting aside the discharge and ordering a further inventory and sale.

Section 29 of the bankrupt law provides that no discharge shall be valid if the bankrupt has wilfully sworn falsely in his affidavit annexed to his petition, schedule, or inventory, &c., or if he has concealed any part of his estate or effects, &c.

Now, the judicial decision setting aside the discharge judicially establishes the fact that Snyder did commit the acts that said section 29 says shall render the discharge invalid, and therefore the discharge was invalid at the instant that it was granted and the property still belonged to the creditors of Snyder, to be administered in the bankrupt court; and when Traber bought at sheriff's sale under judgments in favor of creditors that did not choose to come into the bankrupt court and take the *pro rata* share, he bought of persons who had nothing, and therefore got nothing, and his grantees have nothing.

They can claim nothing as *bona fide* purchasers.

Traber had full notice of all the defects of the title he was purchasing, both by the record of the bankrupt court and by being attorney in the bankrupt proceedings, and his grantees had full
368 notice by the records of the United States district court in bankruptcy.

Tenth.

The judgments through which plaintiffs claim title were void. This question has been discussed in another brief; but there is one point in regard to jurisdiction in that case that we desire still to call attention to.

The affidavit for the attachment has no venue at its head, but does contain a venue in the body of it. The affidavit is made by Henry R. Seegar and states that the said defendant, Joseph E. Snyder, has property in this the State of Kansas, which is subject in this action to be taken and appropriated to the payment of the debts of the defendant.

That "he, the said defendant, is a non-resident of this the State of Kansas, and that service of summons cannot be made upon him in this the State of Kansas."

Thus three times the so-called affiant states by the word "this" that he is making the affidavit within the State of Kansas and as fully asserts that the instrument is sworn to in the State of Kansas as it asserts any other fact. The affidavit purports to be sworn to before Jos. L. Norman, notary public in and for the county of Jackson and State of Missouri. By the writing of this so-called affidavit it is clear beyond doubt that the affidavit is sworn to in Kansas and before an officer of Missouri. It admits of no doubt that an affidavit sworn to outside of the jurisdiction of the officer who takes it is absolutely void. It is a mere statement without oath.

This is no technicality, but a requirement of one claiming to get jurisdiction to take his neighbor's property without his consent and without actual notice of what he is doing; that he shall make the proof required by the statute to get jurisdiction or the jurisdiction shall not be exercised, and if we are right on the views we have taken on this point it decides the cause in our favor without further investigation.

We respectfully submit the cause to the consideration of the court, asking that the court find—

First. Specially, as matter of fact, that the defendants at the commencement of the action were in the possession of the property.

Second. That the plaintiffs have no title to the property.

Third. That as a matter of law the plaintiffs have no right to recover.

NELSON COBB,
Of Counsel for Defendants.

369 In the Supreme Court of the State of Kansas.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPEARING, NICHOLAS McALPINE, and JAMES M. MASON, Plaintiffs in Error,
vs.
GEORGE W. TOURTELOTT and GEORGE P. ALLCUTT, Defendants in Error.

Reply by Plaintiffs in Error.

In answering brief of defendants in error I am compelled to say that I have never before witnessed such a display of ability under the most trying circumstances. The more difficult the task the more brilliant and herculean are the exploits of genius.

The author of the brief of defendants in error has certainly outdone himself. We commend him to the court as the most astute and cunning of argument-makers, having the faculty, very useful to lawyers, of reasoning from certain data in such a way that the wrong shall seem the right, and when the data furnishes an inadequate basis for artificial reasoning he can bridge the chasm by inventions, fabrication, and misstatement, so as, seemingly, to carry conviction.

But, unfortunately, the ample consideration paid by their clients for the use of their brilliant and peerless talent has failed to suborn these gentlemen to such an extent as to fully hide the truth and fairness of the case from the court. As the waters bring forth the dead, so the hideous features of this abnormal reasoning float to the surface, and occasionally the truth is disclosed by some accidental rent through the drapery with which the sophist clothes his cunning scheme.

I shall not undertake an elaborate reply to this medley of self-contradiction and misstatement of the case and the evidence, but content myself with pointing out a few errors the gentlemen have made and the admissions the circumstances, coupled with some lingering desire on their part (although lawyers) to be considered, at least, making an attempt at candor, impelled them to make.

Most of the arguments, it is believed, have been fully anticipated in the prior brief of plaintiffs in error, misstatements and fictions we could not well anticipate.

We feel solid in saying that no part of the argument of plaintiffs in error, in their former brief, has been or can be successfully assailed. The weapon of truth used by plaintiffs in error is invincible and must fall with crushing force upon defendants' air-castles and shiver their high domes like an egg-shell.

One question to be considered in the discussion of this question is, which part of defendants' brief is worth answering. Another is, what part of such briefs the defendants have not already answered themselves by their admissions and self-contradictions.

And, 1st, as to the arguments adduced by defendants in error concerning transfer from assignee Vose to assignee Ess, suggested under IV of brief of defendants in error, see question No. 6, page 3, page 17 of brief to court below, and elsewhere in former brief.

3rd clause, page 21, defendants' brief, concedes that the bankrupt deed passed title to yellow parcel.

Clause C, page 23, asserts that Ess had no title to convey, because Vose made no transfer to him.

E, page 24, maintains that assignee took under six-acre conveyance, and purchasers under him did so likewise.

These clauses are admissions self-contradictory and sweep
370 away as rubbish all that part of the argument of defendants in error referring to that matter as needless and unimportant, since, as has already been shown, an outstanding title even is sufficient in ejectment to defeat the plaintiff therein, yet we maintain it is sufficiently clear that the statute in regard to the making of such transfer is directory and formal rather than essential.

The grounds taken by defendants in error in the 2nd and 3rd clauses of their brief, page 4, is sufficiently answered by saying that there is no conclusive presumption whatever that a person may not offer and attempt to convey lands which do not belong to him. Land traders often give deeds for land, the title to which at the time is in some third person, as a matter of record, by virtue of some previous arrangement with the owner or with the intent of afterwards acquiring title thereto.

The argument on page 5 of plaintiffs' brief has already received attention; we have only this to say in addition, that calls may be rejected but can hardly be supplied. To make the theory of defendants in error plausible a new description would have to be made and a number of new calls. This is not allowable as we understand the law.

We do not consider the cases cited on pages 6 and 7 as particularly applicable in this case. It looks like a labored argument along here. All this has been sufficiently answered in a former brief.

The argument on page ten (10) is far-fetched and impossible. It will not answer here in Kansas. The same may be said of 11, 12, 13, 14, and 15.

The attempt of defendants in error to draw a distinction between the California and Kansas statutes in regard to affidavits in attachment is pitiful.

The court is referred to pages 9, 10, 11, 12, Mason's brief, and No. 10, page 10, Cobb's brief, by plaintiff- in error, to court below.

Under No. 111 defendants in error make many statements that are not sustained by the record. We simply call the attention of the court to the record and say that the matters stated on pages 15, 16, and 17 are grossly unfair and incorrect. We ask the court not to be influenced by the defendants' version.

The statement that the evidence as shown to the court in the record is incomplete or lacks any of the features of clearness essential to a clear understanding of the case is particularly objectionable and untrue. The statement that the court below was in a better position to understand the details of evidence, etc., is untrue.

The evidence was taken down by a short-hand reporter, an employee of the office of the firm of Pratt, Brumback and Ferry, de-

fendants' attorneys, and every word was taken. Points in the plat to which evidence was directed are located distinctly by letters and marks in every instance. What advantage the defendants can hope to gain by such false assertions and by such effort to weaken the faith of the court in the case made is difficult to discern, and in all this there is something of the ring of the old insolent demeanor, self-assurance, and confidence which characterized the defendants in the presence of the court below in the efforts of the defendants in error to cast reproach upon the plaintiffs in error by unfounded assumptions and flavor of disrespect which the defendants should have abandoned when they left behind the trailed and draggled skirts of the trial court and came before that enlightened forum of light and justice, the supreme court of the State of Kansas, in whose dignified presence every man stands equal under the clear light of his own truthful merits.

If we wished to be venomous, as our opponents, we could assert that there were many other significant facts on the trial that did not appear in the evidence that prejudiced the cause of
371 plaintiffs in error and influenced the court to find absurdly and persistently in favor of the defendants in error and to defeat the plaintiffs in error in their efforts for a fair trial, and we could point to a shameful record, but it is needless.

The case is full of it, and it speaks its own language in tones too plain to be mistaken. It is so plain on the face of this record that he who runs may read. We invoke no calumny. No assertion from our own lips could add weight or force to the conviction. It is there in black and white in the record, and on the record let this case stand and not on the assertions of the parties.

If the supreme court can find anything in the record to sustain the assertion that "Mason resorted to various devices to get rid of tenants," etc., or any unbecoming conduct let it go for what it is worth. The supreme court will believe nothing of the kind, because there is nothing in the record to sustain it.

Defendants in error, on page 16, say that "plaintiffs in error made desperate efforts to prove that Bartlett and Cobb had some kind of possession before Traber and defendants in error took actual possession."

Yes, indeed, and plaintiffs in error did prove it, and the proof was plain, clear, direct, convincing, and uncontradicted.

See page 10, former brief.

The defendants, on page 19, say that the court evidently referred to the six (6) acre deed and bases this upon the fact, as stated on page 18, that a copy of this deed was filed in the bankrupt court, page 214, record, but defendants unfairly neglect to state that the four-acre deed was also filed in the same court and also appears immediately following.

This does away with the defendants' euphonious word "evidently" and proves that the court had both deeds before it, and it will be presumed that it had before it all the facts necessary to enlighten it, though the evidence does not all appear.

Again, on page 23, defendants say that the assignee sold the six (6) acre tract, and they would have the court believe that he sold that only.

The record shows differently; that he sold all of the four-acre tract and purported to sell two acres of the six, leaving two more of the original six unsold. If this doctrine of election is worth anything, therefore it goes to prove the contrary of what the defendants in error are contending for.

As to the 2nd clause, page 2 of defendants' brief, it may be conjectured, perhaps, that James intended to convey the lands platted to Snyder by his deed of 1869, and it may be deemed that the equities of the case would lead to this conclusion; but the point the defendants in error raise is that of a paper title, technically speaking. They mean the legal paper title only as contradistinguished from any equity that might arise by reason of any error or doubtful description.

Defendants seek to rally behind this superficial barrier, but when the plaintiffs in error point out the defect in the deed of 1869 as, not technically speaking, conveying the lands to Snyder at all because it does not begin at the right corner the defendants in error beg the court to release them from the effect of their own rule and to find not according to the actual description, but to consider that the defendants in error, in a plain, naked, ejectment suit, have, in effect, filed a bill in equity to reform a mistake in description and in the same suit ask that such mistake shall be corrected so that they can carry their point.

There is no plainer provision of the law than that he who asks equity shall grant it.

The defendants, hanging alone upon a technicality, finding themselves fairly caught upon the same hook of technicality hung up, impaled high and dry between heaven and earth, appeal
372 piteously for the interposition of the court to release them from their awkward dilemma.

The court will no doubt find it convenient to quote some homespun truths to them, such as—

"Those who live by the sword must die by the sword."

"As you mete it to others, it shall be meted to you."—Measure for Measure.

He who seeks to gain a piece of land purely upon a technicality, without any real equity thereto, cannot complain if he is met by the same kind of technicality to bar his aggressive advance.

The technicality upon which the defendants in error seek to recover is suggested in the second clause, page 2, of their brief, in which they say, "Defendants in error claim that plaintiffs in error have no good paper title and that the judgment of the lower court is right, because defendants in error had such prior actual possession of the premises sued for as will uphold the judgment."

It will here be seen that the defendants in error do not claim an equity, but a technicality, as grounds of recovery.

It has been shown in a former brief that defendants in error claim title to the Snyder lands under an attachment sale made in

1874, in a suit against Snyder, when long prior to such attachment proceedings the rights of Snyder, if any he had, had passed to the plaintiffs in error under proceedings in bankruptcy, predicating their pretence of title on the fabricated theory that no title passed to plaintiffs in error, because while they concede the right to the land existed in Snyder from 1860 and continued in him, yet as it was not partitioned finally to him till 1869, subsequent to the filing of the petition in bankruptcy, that therefore no title passed to the bankrupt purchaser.

This is indeed a technicality and a very untenable one, and yet when the defendants in error offer to slay the plaintiffs in error with weapons of their own choosing they make the forum resound with their piteous cries and hiding their naked frauds, stripped of the garb of sophistry, behind this subterfuge, "that plaintiffs in error have no paper title," beseechingly beg the interposing hand of the court to save them from the avenging scimiter of truth.

The paper title from James to McAlpine is as follows:

James to Snyder, agreement 1860–'4, Record, 152–198; partitioned to James, 1867, 39–55; partitioned to Snyder for his creditors, 1869, 65–24; Snyder to Judd, per bankrupt court, deed 1871, 356; Judd to Bartlett and Cobb, deed 1872, 368; Bartlett and Cobb to McAlpine, deed 1880, 370.

And in case it be considered that any defect exists in the grant from James to Snyder, then a deed is procured from James' heirs direct to McAlpine, 378, and besides this tax deeds from the county to McAlpine. 410 to 433.

This, we claim, forms a very solid and indisputable paper title, and that is not only a paper title, technically speaking, but it is a title supported by all the equities of the case, and there is no room or ground for any one to stand upon holding a contrary opinion. We scout the idea as weak and absurd.

Concerning "prior actual possession" claimed by defendants in error, see argument under III, former brief of plaintiffs in error.

If in the case of one dollar, in the release mentioned on page 26 of former brief by plaintiffs in error, we substitute what the one dollar means, according to the evidence of Dr. Wood, Segar, and the decree of the bankrupt court, it will then read: "In consideration of the four-acre grant of 1869 and the six-acre deed of 1864 this bond, etc., is hereby cancelled and discharged." If we had no proof of what the nominal consideration of one dollar
373 stood for we might be in doubt as to what was the actual consideration of such release, and under such circumstances might be unable to see definitely whether the four acres platted to Snyder in 1869 arose from the bond of 1860 or not, but with the evidence above alluded to before us the matter is definitely ascertained. The fact is the four acres of land mentioned originated from such title bond as modified perhaps by the carte-blanche of 1864, the carte-blanche deed of 1864 being in the nature of a renewal of the agreement of 1860 *pro tanto*.

The form with which James or Segar saw fit to clothe their entry of satisfaction of the title bond is of no importance when the sub-

stance of the transaction shows plainly that the four acres of land platted to Snyder in 1869 was the only result. The court must look at results and not to intermediate forms to ascertain the true nature of a transaction.

It is not true, as stated by the defendants in error, that there was a delivery anew of the six (6) acre deed after it was filed.

The interest given to Snyder in the deed of 1864, if any was given, was an insufficient consideration for the release of the title bond of 1860. It must have been a mistake, and an equity certainly arose in favor of Snyder or his assignee in bankruptcy for a more full and complete adjustment of the affairs between James and Snyder or his representatives, for more lands to be conveyed to the latter, for of the six acres which Snyder attempted to locate to himself in the absence of James two acres were then, in 1868, in the Missouri river.

Of the four acres remaining two had been bargained to James F. Joy by a title that Snyder could not defeat, and of the two acres remaining, since the conveyance of 1864 was but a quitclaim and conveyed no after-acquired title, Snyder could hold only a three-eighths ($\frac{3}{8}$) interest and James the remaining five-eighths ($\frac{5}{8}$) interest, and this under the deed of 1864 was still further encumbered with a mortgage in favor of Armstrong for $50 per acre. There then was a necessity for a further partition and location of lands to Snyder or some further consideration to be paid to him to satisfy the equities of the case, and the conveyance of 1864 was entirely inadequate to cancel the title bond of 1860, since Snyder would under that adjustment have only three-eighths ($\frac{3}{8}$) of two acres, which would be three-fourths ($\frac{3}{4}$) of an acre of land, and that was further to be depleted by a mortgage for half ($\frac{1}{2}$) its value, leaving Snyder, in fact, only what amounted to about three-eighths ($\frac{3}{8}$) of an acre to show for his ten (10) acre title bond.

This would be unjust and irreconcileable with equity, but it is the doctrine of the defendants in error that leads to this absurdity.

If, then, it was finally agreed or was just and proper that Snyder should have as a final settlement of his title-bond interest four (4) acres of land unencumbered, he still would have in the hands of James $3\frac{1}{8}$ acres of land, which is what the one dollar mentioned in the release offered by plaintiffs below means and represents.

This is evidently the truth of the matter deducible from all the evidence and the reason of the case.

James must have been, from the relation he held to Snyder under the title bond of 1860, cognizant of the fact that Snyder was secretly defrauding the bankrupt assignee and probably helped him to endeavor to elude the bankrupt court with the assets arising from this interest. Snyder, Segar, and James were evidently parties to this fraud, knew—must have known—that bankrupt proceedings were pending against Snyder, and held the assets for him upon a secret trust.

The location of 1869 to Snyder was the sequel of the secret trust under which James held Snyder's interest. From 1860 to 1864 Segar for the benefit of Snyder held such equitable interest under

the title bond, the legal title being in James. All through the long years from 1864 to 1869 we may consider that James held
374 the above-mentioned $\frac{3}{8}$ of an acre interest, under the modification of the agreement, by force of the carte-blanche deed of 1864—that is to say, if we give such — blanche deed any validity at all, it cannot be for any more than the interest it described. The balance of the interest remained just as it did before the deed of 1864, the legal title in James and Segar and the equitable in Snyder, and the release of the title bond introduced in evidence by the defendants aptly and very properly mentioned the consideration for the settlement of the title bond as being the carte-blanche deed of 1864, which meant an interest of about three-eighths ($\frac{3}{8}$) of an acre, and the further consideration of one dollar, which meant three and five-eighths ($3\frac{5}{8}$) acres of land—that is to say, if we consider even if James did ratify the deed of 1864, as defendants claim, this is what it amounts to.

The defendants in error and their grantors who subjected this property to the bankrupt sale were certainly charged with notice of the particular tract located to Snyder as marked on the plat 9, mentioned in a former brief, which covered the lands in dispute.

Now, if it be true, as a matter of law, that because the deed or the plat locating certain lands to Snyder was dated in 1869, and the bankrupt petition in 1867, that therefore the legal title to the said four (4) acres so located cannot pass to the assignee in bankruptcy, because, technically speaking, the legal title was after-acquired assets—

Yet that should not prevent or stand in the way of a recovery by plaintiffs in error of a judgement against the defendants in error, because it is unquestionable from a summary of all the evidence that the equitable title (whatever may become of the legal title) is in the plaintiffs in error.

And it appears by the decisions of the Kansas supreme court heretofore that "in ejectment the party having the better title may always recover, whatever that title may be, legal or equitable." See O'Brien *vs.* Wetherell, 11 Kas., 622. And a party may in an action for the recovery of real property, under sec. 595 of the code (Gen'l Stat., 748 and 749), recover on the strength of an equitable title only, even though the adverse party may hold the legal title. Stout *v.* Hyatt, 13 Kans., 232.

Now, for the sake of argument, conceding the doctrine held by the defendants to be correct as to the ratification of the carte-blanche deed of 1864, we might possibly arrive at the conclusion that the legal title was in Snyder by force of the date of the location being in 1869 and the bankrupt petition being dated in 1867, although the reasoning would be quite superficial by which any one could come even to this opinion.

Such result should be apparent; probably not real.

But as it often happens that persons have property deeded to them to which they have no equitable title, so also persons for long periods of time may have existing equities in lands to which they have no deed formally in writing. It follows that it cuts no figure,

even if this theory of defendants be true, under the present current of our Kansas and American decisions, where the legal title is, since it is the paramount equitable title only that can prevail, and there is no necessity under the modern statutes and decisions to resort to the plenary forms of equity pleadings to be able to show which is the better title.

No person who reads carefully the evidence in this case can be at fault as to where the equitable title rests.

What the bankrupt deed conveyed was what stood in James as the trustee of Snyder, and the location of 1869 had no force to convey the lands to Snyder except as in trust for his creditors, as his discharge, being subsequently set aside for concealment of these assets, was at that time an existing nullity, and it makes no difference that the bankrupt court found assets other than those mentioned in Norman's petition. It made them no less bankrupt assets.

375 Defendants in error say "James ratified the filling in the deed of 1864."

We may more properly say he ratified the act of undoing it, for by the same transaction that he referred to the deed of 1864 as a part of the consideration of the satisfaction of the title bond of 1860 he took a conveyance back from Snyder for the same ground. See Snyder to James, F, 210-211. James ratified something, but he did not ratify the location made by Snyder during his (James') absence in Michigan. What James ratified was the undoing of what Snyder had done amiss. Defendants in error are simply too short-sighted. They mistake the means by which the thing was accomplished for the results—mistake cause for effect—not an uncommon error for people to fall into. The deed of 1864 was not allowed to stand. It did not please James to have Snyder's land located on the river bank where he had previously sold land to Joy. To say that James ratified that location would be to say that he deliberately made what of all things he was most trying to avoid, a complication with Joy and company.

The ultimate intent and result aimed at by James in this transaction unerringly demonstrates what this transaction was.

James' purpose was to arbitrate and he did arbitrate a settlement of the complication in a way satisfactory to himself and in a way that repudiated in effect everything that Snyder had attempted in his absence.

The substance of the whole transaction amounted to a repudiation. It must be looked at as a whole.

It will be remembered that the quitclaim by Snyder back to James of the attempted six (6) acre location was contemporaneous with the transaction of 1869, and it has been heretofore shown that even if it be considered that James ratified the location of 1864, yet it is well proven in this case by the entire testimony that the four (4) acres of 1860 *was* given in lieu of or in exchange for whatever right Snyder had in the six (6) acre location and under the title bond; which latter fact completely takes the wind out of the sails of the defendants in error.

In conclusion we observe that the defendants' cro-chet about the

location of northwest corner of the Joy land continues to harass them, on page 27, and they place it where every sane man places the northeast corner, and to sustain this absurd theory urge that the tract excepted as redeemed lands was on the Missouri river and was the Joy lands. This matter is mentioned in No. VIII in plaintiffs' brief. An effort was made to prove by McAlpine as ex-treasurer that the endorsement of such exception on this four-acre certificate was an error, as the lands had already been redeemed once and that redemption endorsed on the five (5) acre certificate. But the court below refused the testimony offered, as will be seen. However, we think it sufficiently appears, by an inspection of the endorsements, that both the endorsements on the back of the four-acre and the five-acre certificate- were for one and the same transaction.

The lands on the Missouri river were never sold but once and never redeemed but once, and the entry was simply duplicated on such certificates, as McAlpine would have explained if he had been allowed to testify.

But this argument of defendants is, we think, trifling and of very little import in any event, and about all it tends to show is that the defendants are still wild on the question of the northwest corner of the Joy tract, and we suggest that medical treatment would be proper.

For further answer to the anomalous propositions of defendants in error the court is referred to former briefs of plaintiffs in error, where every point will be found thoroughly discussed.

Respectfully submitted.

JAMES M. MASON,
Counsel for Plaintiffs in Error.

376 In the District Court of Wyandotte County, Kansas.

HENRY R. SEEGAR
vs.
JOSEPH SNYDER } 1734.

and

C. F. WELLAND
vs.
JOSEPH SNYDER. } 1735.

James M. Mason, of lawful age, being duly sworn, deposes and says—

That the matters and things stated as facts and relied upon by the interpleaders and opponents to motion to amend herein in this suit in the case of Tourtelott *et al. vs.* McAlpine *et al.*, No. 2547 on this docket of the district court, and in the supreme court in a hearin therein, are all true, and are especially set forth in first five pages of brief "B," and also in the briefs "A," "B," "C," "D," hereto attached; also in brief marked "E."

That all of the things stated in said briefs as matters of fact as contradistinguished from matters of law are true, and affiant hereby attached to said briefs A, B, C, D, and E this affidavit.

JAMES M. MASON.

Subscribed and sworn to before me this 16th day of January, 1883.

L. C. TRICKEY, *Clerk.* [SEAL.]

Endorsed: Seegar *vs.* Snyder. 1734. Welland *vs.* Snyder. 1735. Affidavit and briefs for use of court. Filed this 16th day of January, 1883. Interpleaders. James M. Mason, attorney.

377 No. 44.

Brief of Evidence by Interpleaders, Mason and McAlpine, in Seegar vs. Snyder, 1734; *Welland vs. Snyder,* 1735.

By James M. Mason, per self and attorney for interpleaders and defendants.

Brief of evidence on motion in case of Seegar *vs.* Snyder, 1734; Welland *vs.* Snyder, 1735.

Affidavits.

I. Plat and location of buildings, page 1.

II. Affidavit of McAlpine and Cree showing Ryus' former statement of location of the stump in low place nearer to the Kansas river than to James street, and that he, Ryus, posted but one copy. Page- 2, 3.

III. Affidavit of J. M. Mason showing amount expended for the land, taxes, and improvements since purchase and since commencement of Tourtelott suit; also showing occupancy of the land since 1874 with improvements.

That there were no stumps on the lower benches or westwardly of Wood street; also showing a stump about twenty (20) feet north of the land. Pages 8 to 10.

IV. Affidavit of Sophia A. Cobb.—Cobb had a tenant on the land in 1874 to whom Cobb furnished lumber for the house. Her husband, S. A. Cobb, held possession of the whole four acres up to the day of his death, and never relinquished at any time his claim to said land, but always stood ready to defend it. Pages 12–14.

V. Affidavit of John S. Cox.—Is a real-estate agent; was employed in 1874 to sell said land; had an opportunity to sell a strip reaching from James street to 30 feet easterwardly of Armstrong street. Cobb refused to sell; held the land of high value. Page- 16–19.

VI. Sylvanus Harlep, affidavit.—Resident in the vicinity of the lands since 1859. Knows every part of the tract; worked upon it. There were no stumps on the low ground westerly of easterly line of Wood street nor on the ridge near the center-southerly side.

Northerly and easterly of this ground on higher ground there were stumps; was familiar with the land; saw no notice in 1874; would have seen them if any would have been posted; Enos Long lived on the land in May, 1874; had a house and improvements. Pages 20 to 22.

VII. Harvey Brown.—Makes an affidavit sustaining Campbell. Page 30.

VIII. Affidavit of J. L. Campbell.—Nearly to the same effect as Harlep; knew a stump just north of the land, which he pulled up; intimately acquainted with the tract; speaks also of a stump not on the attached land on which he had seen papers posted. Pages 26 to 28.

IX. George Altop.—Familiar with the land; knew of Enos Long's residence on the land in 1874; never saw any stump on the low benches of this ground. There were stumps northerly of Fowler's cooper shop. Pages 32, 33.

X. Harvey Brown, affidavit.—Knows the ground; no stumps on the low benches; recollect no notice posted on the tract in 1874. His attention would have been called to it if there has been. Page 34.

378 XI. J. D. Pullam, affidavit.—To same effect as Campbell's. No stumps visible on the low benches or on the tract in 1874 westerly of the center line of Wood street; recollects Enos Long living on the land in 1874. No papers posted on the tract in 1874. Pages 36 to 38.

XII. J. M. Mason, affidavit.—Talked with Wm. H. Ryus. Ryus said he posted but one copy only. The stump he posted on was in a low place, near the center of the tract and nearer to Kansas river than to James street; made no measurements; no person was with him to show him exact boundaries. The description is complicated, and Ryus could not have known the location of the land without measurement of courses. Pages 40 to 43.

XIII. Walter Hale, affidavit.—Description complicated. No person could tell the location of that land without measurements, courses, or monuments. Page 44.

XIV. Frances House, affidavit.—Recollects the location of the Enos Long house when he surveyed it about 1878. Description of the land is complicated. No person could locate that land who was not a surveyor or without measurements, courses, or distances. Wm. H. Ryus could not locate it. Pages 46 to 49.

XV. Hiram Akers, affidavit.—To same effect as J. M. Campbell, Harlop, Pullam, and others. Pages 50 to 54.

XVI. Willis Willis, affidavit.—To same effect as last-above affiant; saw piece of paper posted on a stump north of the land in 1874; none on the land. Pages 56 to 61.

XVII. Enos Long, affidavit.—Lived on the land from March, 1874, to March, 1876, continuously; had a house and improvements on same; held and occupied whole four (4) acres under Cobb and Bartlett, and as their tenant in charge of the whole with a visible possession; no stumps on the attached lands; recollects the stump further north than the land; no sheriff ever served any papers on

him or posted any copies on the premises in 1874; otherwise same as Campbell, Harlep, Pullem, Willis, Akers, and others. Pages 64 to 66.

XVIII. Sinthia J. Long, affidavit.—In support of statement of Enos Long. Page 67.

XIX. William M. Glenn, affidavit.—To same effect as those of Long, Akers, Pullem, Willis, Campbell, Harlep, and others. Page- 68, 69.

XX. James M. Mason, affidavit.—Negativing statements made by Traber, showing that Traber paid nothing for the land comparatively, and that Tourtelotte parties have no equities.

Separate affidavit filed December 22nd, 1882.

JAMES M. MASON,
Per Self and Attorney for McAlpine.

Affidavits Subsequently Filed.

John S. Cox, James M. Mason, and N. McAlpine states on interview with Elias Beck wherein he states that he has no recollection whatever of any stump of said attached claim; every effort made by affiants to enable him to recollect. Page- 1 and 2.

379 Also by same interview with Fred. W. Drought, who could recollect nothing, although every opportunity was given and questions asked, mention made of persons who were alleged to have been present with him where he appraised the land, and plat of the land shown him and familiar objects pointed out; also subsequent conversation with Mason in which he repeats former statement.

XXI. Henry Henderson, affidavit.—Built a house on the land 1878; recollects no stumps on attachment claim. Page- 8 and 9.

XXII. James H. Jones, affidavit.—Built a house on the land, he thinks, in 1874, on westerly side of Wood street, on attached claim, just north of 18-foot alley; lived there two or three years, then built a house in 1876, known as the Altop house, on said land; recollect Enos Long lived on the land about the time first house was built. Enos Long's house was on the northeast corner of four-acre tract of Cobb and Bartlett; thinks the first house that was put up was built before Long's house; recollects no stumps on the attachment claim. Page- 12, 13.

XXIII. Wilson Jones, affidavit.—Helped his brother to build Altop's house on the land in 1876; recollects no stumps on attachment claim. Pages 10, 11.

XXIV. James M. Mason's affidavit.—Testifies as to prejudice of Wm. H. Ryus and former partnership and litigation between Ryus and Mason and reason for withdrawing from such relation. Page- 14, 15.

XXV. William, Catherine, and Samuel Taylor, affidavit.—Recollect Enos Long's living on the property. No stumps on the attachment claim. Pages 16–19.

James M. Mason.

XXVI. W. W. Jones, affidavit.—States that he lived in a house westerly side of Wood street, near First street, in 1875, on bottom ground, northerly part of Kansas City, Kansas; afterwards, about 1877, built the Altop house on the land; knows of no stumps on the McAlpine purchase; recollects stumps on the island westerly of this land. Pages 20, 21.

XXVII. John S. Cox, affidavit.—Was agent for the land under Bartlett in spring of 1874. Enos Long lived on the northeast corner of the four acres; had an enclosure of small park; no other fence on the premises; no stump on any part of this land westerly of center line of Wood street and none on any part of the lower benches; no monuments, stakes, or landmarks on the land by which the land could then be located. Mr. Bartlett located it by commencing at Bigger's north fence and running southerly along James street a certain number of feet; thence at right angles westerly to a point between Armstrong's street extended and the alley between Armstrong and Wood streets; thence a — northerly and one easterly, forming a rectangle of four acres. Additional statements that there were no recognized division by fence or other marks in 1874 between what is now the attachment claim and the other part of the Cobb and Bartlett tract. Page- 22–25.

XXVIII. James M. Mason, affidavit.—No recognized division between attachment claim and rest of the Cobb and Bartlett tract in 1874. The first division was in 1879 to designate the easterly line of the McAlpine purchase. Pages 26–28.

XXIX. Mrs. Cornelia Street, affidavit.—Statement fully
380 corroborating the above statement of J. M. Mason. Page 29.

XXX. James M. Mason, affidavit.—Statement of line of title and plat of Kansas City, Kansas. Filed January 6th, 1883.

XXXI. J. M. Mason and N. McAlpine.—Statement that they paid valuable consideration and have valuable interests in the land which are unlitigated and undetermined and are not under the opinion of the supreme court.

The above affidavits show line of title and about $500 purchase-money paid and about five hundred dollars improvements on the land by McAlpine and others. Filed January 6th, 1883.

XXXII. L. Traber, affidavit.—Makes an affidavit of some considerable length, the statements of which are of a general nature; all of which have very little to do with the question of the determination to amend. The whole fully negatived by Mason's affidavit. See No. 20, brief of evidence first filed. Affidavit filed Dec. 27th, 1882.

Affidavits Filed by Tourletotte Parties and Plaintiffs.

I. The affidavit of L. Traber above referred to and which, in our humble opinion, amounts to nothing, so far as the issues involved in this motion to amend attachment returns is concerned, it

being simply an effort on the part of Traber to try the original merits of the Tourletott suit on his own affidavit, and does not reach the question of the amendment spoken of. I imagine we are not going to have a new trial on affidavits in that way. A new trial with a full hearing is what we desire.

II. The opinion and findings of Judge Stephens, which show for themselves, but which can possibly have but very little to do with this motion to amend, since the supreme court decides that the trial court was in error in this matter of attachment returns. Filed January 15th, 1883.

III. Defendants in error, the Tourlettott parties and plaintiffs, herein also file statement that they will read on the hearing of said motions all the papers in cases of Seegar *vs.* Snyder and Welland *vs.* Snyder; also deeds mentioned in the affidavit of Traber, and also said special findings.

IV. Solomon Baimer, affidavit.—States he went several years ago to the land where Kansas City, Kansas, now stands in company with a man, he thinks, was Fred. W. Drought, to appraise a piece of land. He and this man went about two hundred (200) yards, more or less, from the end of the iron bridge and found the stumps; stopped at the stump furthest south; that they waited for W. H. Ryus till he came; he did some writing on the stump, and that they all appraised the land; does not recollect whether Ryus posted any notices on the stump.

V. Harvey Brown, affidavit.—This is the same Harvey Brown who made an affidavit for interpleaders. See brief No. 10 above first filing.

This man contradicts his former statement to us and evidently perjures himself, one way or the other; says that he refused to make us an affidavit, when we have two affidavits from him. See 7 to 10.

We have learned that he was in the hands of the law at the time he recollects so much about the land. See proof No. 4, hereafter filed.

Also affidavit No. —. Hereafter whatever he testifies to is not worth repeating. He makes statements both ways.

VI. Elias Beck, affidavit.—He also says he knows of stumps on the land in 1874, but see affidavit of McAlpine, Mason, and
381 Cox, who called on him prior to making the statement. See No. 38, 39; see also deposition No. —, V.

VI–. The only other proof filed by the Tourtelott parties are the affidavits of Wm. and Samuel Taylor, which evidence is also entirely worthless, since they make for us exactly and directly opposite statements about stumps. See No. 25 above.

VIII. The plaintiffs, the Tourtelott parties, took the affidavit of Fred. W. Drought in the presence of the court, but did not file it; safely stowed it away in their pockets. Interpleaders put both Ryus and Drought on the witness stand and cross-questioned them, and they both and each of them disclosed the facts that they knew nothing which could be sufficient ground for this amendment. Their depositions are on file, and as they are printed on the typewriter the court probably will prefer to read them. Drought says he saw

Ryus post notices. Notices are not copies of attachment orders. See Sharp *vs.* Bard, 43 California, 577, cited in brief.

Recapitulation to Interpleaders.

33. The result of the deposition of W. H. Ryus is that he went on the ground in the vicinity of these lands in company with Solomon Balmer and Fred. W. Drought, but he does not speak with certainty of the locality of this land; found no monuments or boundaries; could not locate the tract by distances or directions from any known objects; could not tell how the land was bounded; only knew the land by what he says Mr. Cobb showed him; made no survey or measurements; Mr. Ryus could not tell whether more than one copy of notice or copy of order of attachment of not., and was unable to state in which case, the Seegar or the Welland case, he posted that copy; claimed to have posted a copy of notice on a stump on the lands on the west side of Wood street extended, partly in a hollow; could not tell on what part of the tract, boundaries not being defined by any monuments, landmarks, or stakes.

Mr. Ryus recollected conversations with Cree and McAlpine and Mason prior to the taking of this deposition in which he admitted stating that he served but one copy; told Mason he could not tell in which case he —, but thought if he could see the paper he could tell in which case he posted the order.

No. 34. Affidavit of James M. Mason to facts stated in brief to trial and supreme court, effect of.

No. 35. Fred. W. Drought deposition.—Recollected going to some land in the locality of the lands in question, but cannot locate them with any degree of accuracy; no stakes, no monuments, no boundaries, directions, or distances; recollects that Ryus posted some "notices" on what was supposed to be the land; what kind of notices does not appear.

Admits that he is strongly prejudiced against Mr. Cree and against Mr. Mason, one of the defendants; disputes and denies former conversations with McAlpine, Cox, Mason, and Cree, admitting a part of said conversations, however, and enough to show the truth of the affidavit on that subject by Cox, McAlpine, Mason, and Cree.

40. The facts would justify no amendment of the attachment returns in this case at this time; the most that can be shown is that Ryus and the appraisers went into the vicinity of the land and that they appraised some lands somewhere there, the precise locality of which they did not, and from the nature of the case could not, know; that Ryus declared that he attached certain lands and posted a notice or order of attachment on a stump but leaves it very doubtful whether such stump was on the lands described or not, and cannot tell in which case he posted said copy.

This is *of* all together of too doubtful a nature to authorize an amendment on this motion, and the same should be denied.

382 38. Affidavit Mason, McAlpine, and Cox.—Visited Elias Beck some time in December, 1882. He states that he can recollect nothing about stumps or lines; knows nothing.

39. Subsequent affidavit of John S. Cox as to what Beck told him concerning — when he, Beck, left the vicinity of the land.—Beck stated that he left the neighborhood about May 1st, 1874; arrived at his destination May 15th, 1874, at a distant part of Missouri; remained away the rest of that year and some time longer. Beck refuses to make further statements.

40. Affidavit of Mason, McAlpine, and Cree and Cox as to what F. W. Drought stated in an interview with him prior to making an affidavit for the Tourtelott parties.—Said Drought stated that he had no recollection of appraising said land, although a map of the lands was shown him and the familiar objects pointed out and names of persons alleged to be with him were mentioned.

41. Record of district court of Atchison county, Kansas, showing that Harvey Brown, alias J. H. Brown, was arrested May 5th, 1874, and was kept in the hands of the law until June, 1876, on a charge of murder, and could not have been about these lands during the time which he testifies.

42. James F. Johnson, ex-county commissioner, affidavit.—Testifies that there were no stumps on the low ground in the slough on said lands; that great changes have taken place in the surface of the said lands by reason of floods since 1871, and thereby the identity of any given tract is rendered impossible, there being no monuments or visible landmarks.

43. J. C. Douglass affidavit.—Knew this land June, 1877; found a house on it westerly of Wood street extended, near the southerly line of this land, and put a tenant in this house. This was the only house westerly of Wood street on this land. These houses and the whole four-acres tract was claimed and in fact held by Cobb and Bartlett. The land westerly of Wood street on said tract was low and sandy and destitute of trees, stumps, and fences.

J. M. MASON,
Attorney for Interpleaders.

Comments on the Evidence.

SEEGAR *vs.* SNYDER. } 1734.

WELLAND *vs.* SNYDER. } 1735.

Motion and interpleaders.

First. The Tourtelott parties and parties plaintiff in said suit have no evidence whatever upon which to base a motion to amend attachment returns, and, by their own showing, even if taken *ex parte*, their evidence will not sustain such amendment. "The facts will not justify the amendment."

No. 1. Their affidavit of L. Traber does not reach the question,

and if it does it is more than negatived and disproved by No. 20 of interpleaders.

Also see No. 34 and briefs attached, also No. 36, &c., and, as stated in former brief, this evidence is objectionable so far as it refers to conversations between the witness and S. A. Cobb, deceased, as being in violation of sec. 322 of the Code, and we hold that the evidence of W. H. Ryus ought to come also within the principle.

2nd. The opinions and findings of the trial court have no
383 bearing on the question raised under this motion and interpleaders except that they may tend to show that if the success of this motion to amend will establish such findings, then the motion to amend ought by all means to be denied.

3rd. There is no evidence in any of the papers alluded to in No. 3 that will avail the said parties asking to amend. The papers show a return already made which is *prima facie* correct and, we think, which shows on its face that the sheriff took possession of the lands, but Ryus says he did not take such possession. This latter statement destroyes a part of the reasoning of the supreme court on that point. See opinion, —, where the supreme court urges that because Ess "did take possession" it makes a better case for the Tourtelott parties, and now that Ryus shows that he did not take possession of the attached lands he knocks the foundation out from under that kind of reasoning. The turning point in the opinion, on page 11, middle of page, seems to be of the fact that Ryus did take possession, &c. If, as Ryus says, "he did not take such possession," on what can the opinion stand? The 20 Kansas, 572, says: The return is *prima facie* correct. We have allowed them, however, to successfully prove that Ryus did not take possession, and that is the only fact that they have shown by way of amendment, and that is the very fact which lets them down, since it is the fact upon which their right to amend stands, as would appear by the opinion. In this, therefore, they are beaten if they succeed.

4th. Soloman Balmer knows nothing that can benefit the case of those asking to amend. He depended upon Drought to locate the lands for him, and Drought says in his evidence that he depended upon Ryus, who in turn, as he states in his evidence, depended on his recollection of what S. A. Cobb told him, and there were no stakes, no monuments, no courses, no distances, no landmarks, no anything by which to locate or remember where the lands were. Ryus simply waived his hand over the waste of treeless, objectless, undefined, sandy tract of land and said, "Here is the land," and they appraised an undefined, boundless tract. They had no way of determining how or where it lay or whether the alleged stumps were on it or were a little way one way or another off to land. They knew no bearings, and a mistake of a few degrees in a bearing would throw them off a hundred (100) feet of the land. Such evidence can be of no value in such a case.

No. 5. Harvey Brown has made affidavit both ways, and his criminal record is on file, showing that he was not here at the time concerning which he testified. See Nos. 7, 10, 41.

No. 6. Elias Beck affidavit does not reach us at all in any event.

He testified to stumps on the tract, but whether easterly or westerly of Wood street extended Mr. Beck is cautious not to tell us. There might have been fifty (50) stumps easterly of Wood street extended on low ground, and it would not in any manner conflict with the main facts shown by the interpleaders. All we have been laboring to prove is that there were no stumps westerly of Wood street extended, where Ryus swears he posted copies, &c. There is no claim made that Ryus posted on any stump anywhere else. We say, therefore, that Mr. Beck does not antagonize us in any way; but, even if he did, his former statements to Cox, Mason, and McAlpine would impeach to a great extent the force of his testimony. See 38, 39.

No. 7. As to statement procured by Tourtelott parties of Samuel and William Taylor, see No. 25.

384 8. The only other evidence that can cut any figure under this motion is found in the depositions of Ryus and Drought, which has received some discussion in former briefs.

It will be seen by the above that the Tourtelott parties have really produced no evidence which is not neutralized by contradictory statements from the mouths of their own witnesses; so that when it is all analyzed it forms no basis for the allowance of this amendment.

Respectfully submitted,

J. M. MASON.

We hereby acknowledge service of a copy of the within and foregoing briefs and argument this 19th day of February, A. D. 1883.

PRATT, BRUMBACK AND FERRY,
Attorneys for Tourtelott and Allcutt Parties and for Plaintiffs.

Filed February 20th, 1883.

L. C. TRICKEY, *Clerk.*

385 No. 45.

Supplement to Argument and Brief in File No. 34, *in Cases of Seegar vs. Snyder*, 1734; *Welland vs. Snyder*, 1735.

Prepared by James M. Mason, attorney for interpleaders and opponents to motion to amend attachment returns.

Additional citation of authorities in the matter of the pending motion *of* to amend attachment returns in the cases of Seegar *vs.* Snyder and Welland *vs.* Snyder, 1734 & 1735.

Read Freeman on Executions, *Nis.* 358, 359, &c., and decisions cited.

Also Herman on Executions to same effect.

Supreme court of Ohio. This in many features is a case in point.

"The return of a sheriff as to description of property levied upon cannot be amended so as to prejudice other liens intervening between the time of the levy and the date of the amendment."

If an amendment be made the lien will only operate as to third persons from the date of the amendment. Ohio Life Ins. and Trust Co. *et al. vs.* Urbana Ins. Co. *et al.*, 13 Ohio, 220 to 227.

On the question of discretion in former brief in case cited questions of this description are always addressed to the sound discretion of the court and may be granted or refused without subjecting the decisions to review or reversal by an appellate court.

Though the appellate court may think the discretion of the inferior court has been injudiciously exercised, the decision is nevertheless final and conclusive unless the inferior court has transcended its powers or violated some established principles of law. See long list of authorities cited to sustain this—in this Ohio case.

On the question of opening the case and allowing new evidence "it is too late to offer evidence-in-chief after the testimony is closed." See long list of authorities cited, page 309; First Series U. S. Digest, "Reopening the cause;" Vol. XIII, Trial.

2385. Where a judge takes a case under advisement he cannot recall witnesses and re-examine them without notice to the party, so that he may be present and cross-examine.

Hurd *vs.* Lill, 26 Ills., 495.

2394. "It is a matter of discretion of the lower court, with which the appellate court will not interfere, where it is not pretended where plaintiff has been prevented from offering co-ntervailing evidence or that the true merits of the case have been injured."

Hill *vs.* Miller, 7 La. Ann., 622.

2397. Evidence called for "*ex officio*" by the judge after the cause is submitted and under advisement is unauthorized and will be disregarded on appeal. Sowers *vs.* Shiff, 15 La. Ann., 300.

Copy of sec. 45 A, pg. 606, compiled laws on the subject of interpleaders.

"SEC. 1. Any person claiming property, money, effects, or credits attached may interplead in the cause, verifying the same by affidavit made by himself, agent, or attorney, and issues may be made upon such interpleader and shall be tried as like issues between plaintiff and defendant and without unnecessary delay."

Respectfully submitted.

JAMES M. MASON,
Per Self and Attorney for McAlpine.

386 SEEGAR *vs.* SNYDER.
WELLAND *vs.* SNYDER.

In the matter of the motions concerning attachment returns and interpleaders herein.

Brief.

The discussion involves three questions:

I. Can the amendment be made after McAlpine and Mason's rights have intervened?

The authorities say not.

Upon this point decisions before cited in a former brief are applicable, among which were the following citations, viz:

Howard *vs.* Priestly, 58 Miss., 21; Smith *vs.* Mar-in, 20 Kas., 572; Phillips *vs.* Howard, 78 N. C., 31.

There can be no doubt but that the current of decisions are to this effect. The only question is, did the interpleaders have any rights affected by such amendment? This has also been thoroughly discussed in a former brief.

II. Is service by posting a copy available when the premises are occupied?

Sec. 198 Code Compiled Laws, provided laws, provides that—

"When the property attached is real property the officer shall leave with the occupant thereof, or, if there be no occupant, in a conspicuous place thereon, a copy of the order."

Cowan on Attachments has the following:

"When the jurisdiction of the court or officer is made to depend on the return of process in a given form or proof of a particular fact, and the return is not substantially in the form prescribed or the fact is not proved, the court or officer does not acquire jurisdiction, and the proceedings are absolutely void."

In such case the magistrate should dismiss the attachment.

Dans *vs.* Marshall, 14 Barb., 96.

"When want of jurisdiction appears on the record of a court of general jurisdiction the record is a nullity, and no rights can be acquired under it."

Wilson *vs.* Arnold, 2 Mich., 98.

Roberts *vs.* Stucksluger, 4 Texas, 307–661, a case in point, no statement being made where the copy was left.

Even if the plaintiffs could make the amendment proposed it would do them no good, as the premises were occupied at the time of the pretended attachment, and a copy should have been left with the occupant and not posted on a stump on the premises.

Enos Long lived with his family on the premises at the time,

had an enclosure, cultivated ground, had authority and possession over the whole four acres, which includes the lands claimed to be attached, and, within the meaning of section 198, was an "occupant" of the lands.

See Cooley on Taxation, page 276, and authorities there cited.

"Occupation and cultivation of part of a warrant fixes the character of the whole."

Briddle *vs.* Nobles, 68 Penn., 279.

George *vs.* Messenger, 73 Penn., 418, hold that one having a paper title to a lot of 169 acres and who, though not on it, cultivated a small piece of it, was entitled to notice, and a sale without giving it was void.

5 Hill, 286; 15 Wend., 348; 16 Wend., 550.

This was a cause where the statute required a notice to be given to the "occupant."

A party who enters the possession of lands under a con-
387 veyance is *is* presumed to enter according to the description in the deed, and his occupancy of a part claiming the whole is construed as possession of the entire tract, and this even where the occupation is only by a tenant.

Coleman *vs.* Billings, 89 Ills., 183; Humphries *vs.* Hufman, 33 Ohio St., 395. Under section 198 it is not contemplated that "occupation" means more than "possession." The two words are used as interchangeable or synonomous.

Occupation under this section can hardly be intended to mean actual possession, for it cannot be supposed that a levy of an attachment can be made good by simply posting a copy when even any part of the same tract of land is actually occupied as a residence, since if this were so a person who had only a small improvement on one corner of a quarter section might be sold without actual notice. No one has attempted heretofore to do such a thing, and therefore cases exactly in point are rare to find. It has been left, probably, for Traber and Norman to make the first attempt in such an enterprise.

Plainly the supreme court does not construe the word "occupied" as it is used in the statute to mean more than the term "constructive poss-ion," for the words of the homestead exemption law are "occupied as a residence," and this is construed to mean that if a debtor has even a small improvement on one part of the tract this partial occupancy fixes the quality of the whole tract.

If the intention to hold the same as a homestead be clear, see Gilworth *vs.* Cady, 21 Kas., 702. But again it is not essential to the actual possession of lands that it be fenced or inclosed in any way. "Entering upon land, partial fencing, cultivating timber, and exercising public acts of ownership constitute actual possession." McLean *vs.* Forder, 61 Ills., 106.

Proof that a party was using a lot to keep his wood and buggy or had dug a trench, &c., is sufficient to sustain a finding of "actual possession." 11 Kas., 59.

This four acres of land upon which Enos Long and family lived in 1874 was at the time claimed by Cobb and Bartlett under a conveyance duly recorded — in its description the whole four acres, and included the lands claimed to be attached herein. It was held as a whole; possessed and occupied and claimed as a whole. It had never been divided or segregated in any way. It was borne on the plat of the land on file in the office of the register of deeds from 1869, thenceforward as a separate tract of four acres of land. No deed on record ever described it as less than a whole tract until Traber's attachment suit came, and then he, in above suits of attachment, attempted to sell a part of this undivided, indivisible, whole tract of land by simply posting a notice on a stump on one end of the land, while there was an actual occupant living on the other end actually claiming and holding possession of the whole. Enos Long and wife and William Glenn testifies that they occupied the whole tract of four acres upon which it is claimed attachments were levied in May, 1874; they occupied from early part of March of that year. See Nos. 17, 18, 19. This is further supported in Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 22, 23, 25, 26, 27, 28, 29, 33, 35, 36, 43, and other affidavits, and there can be no doubt of it as a matter of fact, as it is not contradicted.

Enos Long and family were occupants within the meaning of sec. 198 of the code.

Besides this there were occupants, it appears, in 1874 on the westerly side of Wood street and directly on the lands in controversy. 22, 23, 26, 43.

It is difficult to find a case containing the meaning of the word "occupant" as used in sec. 198, but we find numerous decisions construing it in reference to other matters, and, in addition to
388 the cases already cited, I ask special attention to the following cases:

1. New England Hospital *vs.* City of Boston, 113 Mass., 518.
2. Potts *et al. vs.* Davenport *et al.*, 79 Ills., 455.
3. Case of Lather *vs.* Chapin, 12 Nevada, 65.
4. Lacy *vs.* Green, 84 Penn. State, 520, in which it is decided "that in its primary and most familiar sense the word 'occupancy' is the equivalent of possession."

The case in 12 Nevada cites 3 Minn., 451; 12 Minn., 560; 6 Mich., 213; Mansfield Town Co. *vs.* Morris, 11 Kas., 148; Sherry *vs.* Simpson, 11 Kas., 615.

All of the above cases construe the meaning of the word occupancy and hold that to be an occupant it is not essential that every foot of ground should be reduced to actual enclosure and all improvements on one part of the tract, with residence and color of title, is, no doubt, sufficient occupancy within the meaning of section 198 of the code.

But, III, the sheriff did not even post a copy of the order of attachment on the premises.

Even if the proposed amendment could be made now so as to cut out new and recently acquired rights, even if the premises were not occupied—

Still the plaintiffs had no jurisdiction, for they posted no copy or copies on the premises.

Ryus, the deputy sheriff, says he posted copies or a copy, but will not swear in which case—the Segar or the Welland case—he posted that copy. This destroys the whole evidence. Ryus does not know in which case he can amend. He cannot amend in both cases, for one of them would be a false return even on his own showing, and he cannot be allowed to make a false return.

This is very far from the certainty which the law requires in a case like this where an amendment of attachment return is asked after eight years to cut out intervening rights.

Evidently the amendment cannot be made on this evidence. Even if this were an *ex parte* application for such amendment the court would not be authorized in allowing the amendment even on Mr. Ryus' own showing. The former return is *prima facie* correct and the burden of proof is on the sheriff and the plaintiff to show that the former return was wrong and the new one proposed is right. That burden of proof is not sustained in this case. See 20 Kas., 572.

It is the duty of the sheriff when returning an attachment of real property to endorse thereon what acts he performed in serving the writ, and it will be presumed that he state- all that he did towards making the service. If he returns the service of attachment on real estate made by posting notice instead of a copy of attachment on the most public part of the property attached it is not valid and creates no lien on the property. Sharp *vs.* Bird, 43 Cal., 577.

The burden of proof, I have said, is not sustained, but, on the contrary, while they show that the former return is wrong they also show that the supposed return is also wrong or, at best, so uncertain as not to insure that it is right and by far too uncertain for the purposes of this motion, since a sheriff ought not to be allowed to amend in such a case as this unless it is certain what the amendment is to be; no loose practice is allowable in such cases.

But, furthermore, it is by no means satisfactorily proven in this case that the stump upon which Mr. Ryus says he posted a copy was in the premises claimed to be attached.

It is a question of law whether since it was attached and appraised as tracts there ought not to have been a notice or copy on each tract in each of the cases. But no satisfactory proof is given in
389 this case that any notice was posted on any part of any of the tracts or on even the whole three tracts taken as a whole. If the court will carefully read the evidence, it will find that it is well proven that no stumps such as Mr. Ryus speaks of *was* on the ground in the location he places it in 1874.

And if the court will read the evidence of the experts Hale, House, and Mason and take this in connection with Mr. Ryus' evidence, in which he states that he made no measurements from no corners or monuments; did not know what bounded the land east, north, south, or west; did not know how far it was from the Kansas river or from any other object, &c., &c., and I have no doubt from all this testimony that the court will be convinced that it is by

no means definite or certain that Ryus knew where the land or its boundaries were, and it will appear plain that he could not have told with any degree of certainty or definitely whether or not the stump he says he posted a copy on was on the land or not.

Added to this is the uncertainty as to whether he posted a copy in the Seegar or Welland case. All together it makes a very dubious or doubtful showing on which to ask this amendment.

One word in addition concerning the newly acquired interest of McAlpine and Mason in this land, which are as yet unlitigated; none of the interests of Mason or McAlpine are concluded, as has been shown.

Being in possession and holding land under any sale for taxes entitled occupants to the benefit of the occupying claimants law; also a case in point. See Stephens *vs.* Gahriri, 4 Kas., 353.

These rights are for the most part also newly acquired under this law and cannot be cut out by any amendment.

And the party litigating need not set forth in his pleadings that he expects to claim under the occupying claimant law. Semert *vs.* Barnes, 18 Kas., 913.

In some States no amendment of an attachment return is allowed after the term of office of the sheriff has expired. Cale *vs.* Dugger, 41 Miss., 670.

And in States where such amendment is allowable it is only upon a full hearing and with extreme caution, the evidence of the ex-sheriff in such a case being of no higher order and entitled to no more credit than any other kind of evidence, since he is no longer bound by an official oath and is not liable on his official bond.

Such a proceeding is in derogation of the common law. See Doty *et al. vs.* Ragour & Co., 9 Ohio St., 519.

In doubtful cases such as this such right to amend should invariably be denied. The rights of interpleaders are still pending in one court or another, and must be so regarded and cannot be cut off by any decision of the supreme court or any other court before they have their day in court in favor of the plaintiffs, the Tourtelotte parties or the Snyder heirs.

JAMES M. MASON,
Per Self and Attorney for McAlpine.

Considerable stress is placed upon the fact that Mr. Ryus testifies that it was his uniform custom to make out and post copies under each attachment placed in his hands. While this may be true, it is by no means direct proof of the actual posting in a given place such as the law requires. It is equally true that it is Mr. Ryus' custom to sign his attachment returns and make returns of all the things he did do in serving a writ of attachment, and if he were asked the question he would have so stated.

Yet it is true that in this case he did not sign the return nor did he therein state that he posted a copy of the order of attachment on the premises, and if it was his uniform custom and habit and one not to be varied from in any case how does it happen that the return is not right in this case?

390 The very evidence of custom rested upon by those relied upon seeking to amend goes to show that he did no more than is stated in his first return, and any innovation upon the first return *are* in conflict with the principles of custom and habit relied upon.

That is altogether too weak kind of evidence to be of any use in a case of this kind. If Mr. Ryus varied from his habits in one matter he very likely did in another.

Mr. Ryus' evidence is exceedingly contradictory and vaccillating. He avoids direct questions with a persistency which forgets suspicion and slides around from one pretext to another, manifesting a desire to make it appear that he did what the law requires without swearing that he did so.

Ex parte he made an affidavit in each case—the Segar and Welland cases—that he posted copies in each of those cases, but when brought to the witness stand says he will not swear whether he did or did not.

In the presence of McAlpine, Cree, and Mason he tells one story about the location of the stump and in his evidence something different. He tells all three persons above named that he posted but one copy, and to Mason, and in his deposition he says he cannot tell which case that was in.

Now, when Ryus made the first statement in each case concerning this amendment he manifested a willingness to swear, and he did swear, as appears by his after-statement, to what he did not actually know.

If a witness will do this what part of his evidence can we believe? Can we believe any of it? Certainly not when it comes in conflict with any statement of any other person not similarly impeached. The evidence of Mr. Ryus is inconsistent and self-contradictory, and, in addition thereto, it is contradicted by other witnesses; but, contradicted or uncontradicted, it is not sufficient.

J. M. MASON.

Service of copy the within brief and argument this day acknowledged this 27th day of Dec., 1882.

PRATT, BRUMBACK AND FERREY, *J.*

If there were no other reasons to urge against the justness of this proposed amendments than the rights acquired by McAlpine and Mason under the occupying claimants' law, that alone would be sufficient. The authorities upon this point are numerous, and, the beauty of this, they are Kansas authorities.

"Being in possession of and holding lands under any sale for taxes entitles occupant to the benefit of the occupying claimants' law." Stephens *vs.* Guthrie, 4 Kas., 353.

We not only held this land under a tax deed regular upon its face, but also we traced our title by a regular chain deducible from the records of the United States court. See numerous authorities cited on this subject under the head of "occupying claimants." Kansas Digest.

How, then, can a court grant this amendment cutting off all rights without first giving us an opportunity to show our improvements? We should have been allowed a new trial on this ground if upon no other; otherwise the law is a farce and an intricate mesh of fraudulent devices to entrap the unwary.

Commenting on the evidence, we notice something in the evidence of Ryus and Drought which comes out as if it had been put in there by the plaintiffs, to the effect of endeavoring to convey the impression that there was a fence in 1874 marking a division of the attached lands from the rest of the Cobb and Bartlett tracts.

391 This — an effort to try to make it appear to the court that there was a recognized division there, but the other indefiniteness of the evidence makes it entirely worthless, in — both of these worthies fail to tell how much fence was there or whether it was in the right place or not; what direction it ran or what its objects. The facts are there were no fences on the land except what enclosed Enos Long's garden, and this must have been the fence they alluded to, as they do not pretend to and are very delicate about giving it a precise location. If it be one of Brother Brumback's ingenious devices to corroborate our testimony by showing occupation of the tract by Long or others we are thankful to the gentleman for it; but even if there were a few feet of fence somewhere on the land and not known to be on any line of division, but, say, it was a part of a cross-fence dividing the four acres into lots, it has no effect whatever to detach one part of the land from the other so as to make a separate tract from the one resided on by Long for the purposes of section 198, Code.

Upon this question raised—Hassett *vs.* Ridgely, 49 Ill., 197; also 57 Ga., 204; Barker *vs.* Jones, 49 Ills.—occurs the following language: "The separation of a farm into different enclosures would not under the tract thus enclosed separate nor would it destroy the entirety of possession."

But there was no such fence where plaintiffs would like to prove one; that is a vagary of a disordered intellect.

But the evidence of Mr. Fred. Drought is entirely worthless, not only on the ground that he admits an existing prejudice against Mason and Cree, but also on account of its numerous contradictions to his former statements. The court will be unable to realize how a man who does not remember and cannot be made to remember when names, places, dates, and familiar objects are called to his attention at one time and soon after his mind can obtain an electric light to illuminate all the dark caverns and recesses of his intellect which before was all darkness merely because another person prompted him with very nearly the same and perhaps very few additional suggestions. Such a thing may be possible, but not probable with a healthy mind.

And the fact of his bitter prejudice testified to may account for it, or it may be, as he suggested in one portion of his evidence, he is paid for his knowledge; but take his evidence for all that there is in it, and it can be of no consequence, for neither Drought nor

Ryus show in their evidence that they know how to locate the attachment claim.

If the court will take the description it will be found that in connection with the plat it is a difficult problem for any one but an expert; and see evidence of Hale, House, and Mason on this subject, Nos. 12, 13, 14.

Mr. Drought, when asked what is the meaning of "south 61½ degrees west," answers that it means "more south than west." Other answers similar to this show how much he knew about what he was talking about. No stakes, no monuments, no courses, no distances, no dimensions, no landmarks, and yet they know just where it was, just what stump was on it, in a wild, trackless sand bar, on an open, trackless sea, on a wide, open prairie, assumed to locate a tract the initial point of which is 640½ feet south 61½ degrees west from another point (which the plat shows to be in the Missouri river) north 28½ degrees west 3,604½ feet from the southeast corner of section 11, 11, 25. Such a thing is impossible to these men.

But Mr. Ryus says that Mr. Cobb showed him the boundaries of some land there once, but fails to make it clear whether it was the attached claim or not and, the way I understand it, contradicts himself in this evidence, and says that Cobb did not show him the attached claim, but some lands on James street which he, Cobb, proposed to sell him (Ryus).

Even if Mr. Cobb did show him such boundaries, Mr. Cobb may as well have been mistaken as well as any one else, and there
392 is no conclusion that it is anything but hearsay. It is altogether too doubtful a kind of evidence to hang an amendment of an attachment return upon in such a case as this.

In any view of the case, *and* we object to such evidence "anyway." Mr. Cobb being dead, it appears it would come within the provisions of section No. 322 of the code to the effect that the assignor of the thing in action cannot give testimony as to matters transpiring between him and the deceased person.

Mr. Ryus is answerable to the plaintiff or to the parties purporting to purchased the lands in these suits for any deficiencies in his duties in serving those —, and that way comes at least within the principle of the rule, but while I am on this subject I also desire to say that we also object to that part of Mr. Traber's evidence which states that Cobb abandoned the land, &c., as Traber is the assignor of the thing in action, and certainly comes within the rule, Mr. Cobb being dead.

In both of these cases the dead Cobb cannot come back from the spirit world to stultify these statements, and both of these cases are within the rule. Mr. Drought does not say, as I remember, however, that Ryus posted "copies of attachment orders." This will not do. The only thing Drought says is that Ryus posted "notices." What "notices" does not appear. This is too indefinite, for see following:

"If the officer returns a service of attachment on real estate by posting a notice instead of a copy of the attachment, *and* it is not valid and creates no lien." Sharp *vs.* Beard, 43 Cal., 577.

Drought did not read these papers. Why should he? It was not his business to review the officer's copy or return. He says he did not read them in his testimony. How then could he know of what they were copies. How then can such evidence help to prove anything? There are many decisions to the effect that attachment returns cannot be amended by extraneous, parol testimony. See Smith *vs.* Martin, 20 Kas., 572; Bond *vs.* Wilson, 8 Kas., 228; Starkweather *vs.* Morgan, 15 Kas., 274; Chambers *vs.* Kingbridge Co., 15 Kas., 270.

In this case Ryus could only ascertain the location of the boundaries by inquiry, and, on the direct question that the attachment return cannot be made good by parol outside of the evidence of Ryus himself, see analogous cases, Heywood *vs.* Collins, 60 Ills., 322; Danes *vs.* Maynard, 9 Mass., 242, and while the rule may not obtain in Kansas in all its strictness, yet in a case of this kind, where the sheriff himself cannot make out anything to amend upon, either in the former return or record of the case in any memoranda in his own parol statement, the return ought certainly not to be allowed to rest solely upon the verbal testimony of an outside party, whose ignorance of the whole matter is so patent.

The most that could have been done with such evidence was to use or corroborate the sheriff's statements when he could himself make out the essential facts, which is not this case. Any other course would be to substitute some other person for the sheriff. In this way we could do away with the necessity of having any sheriff's return in any case, and by substituting the unauthorized statements of unresponsible persons we could amend a party into court or out of court as best suited the purpose.

Such a doctrine would never do. It would be an abrogation of the whole theory of attachment. 11 Mass., 488, and 17 Pick., 198, are also good cases on this subject to read.

But, returning to a point heretofore referred to in this argument, the lands claiming to be attached were occupied at the time of the pretended attachment. The proof is abundant and uncontradicted that Enos long lived upon and occupied said four acres, including said lands in 1874 when the attachment is claimed; if so,
393 the posting on a stump is wholly void, but it appears by affidavit subsequently filed that there was also an occupant of the attached lands in 1874 living on the westerly side of Wood street extended north of the 18-foot alley or what would be called First street. This would be upon the attachment claim squarely, and, considering the doubt which must hang around Mr. Ryus' knowledge of the boundaries, it's not at all impossible and is probably true that a house existed there when Ryus pretended to serve attachments.

Mr. Ryus' knowledge of what Cobb told him and his recollection of such knowledge without stake, landmark, courses, or distances make it highly probable that he might be mistaken in the locality of that land 20, 50, or even a 100 feet considering its distance from any known object in that locality. See description and affidavits Nos. 12, 13, 14.

This leaves a probability open for the correctness of the state-

ments made by these witnesses without the necessity of any implications that Ryus' statements are willfully false.

And if it be true that there was an occupant of the lands, both on the easterly and westerly ends of the four (4) acres, that settles the question concerning this proposed amendment, and this will defeat the amendment, since if the occupant of the westerly end of the tract was only an occupant of a part or was a mere intruder it would be sufficient. See Campbell *vs.* Wilson, 1 Watts, 503; Sumner *vs.* Call, 4 W. S., 133.

But we are not obliged to rely upon the westerly occupant, since — long occupied the whole four acres, and we may presume that the erection on the westerly side of Wood street was under him, or even if Long's house were on the easterly end it is sufficient proof of occupation of westerly side of Wood street. See affidavits Nos. 22, 23, 26, by Jones, and No. 43, by J. C. Douglass, who shows that house existed there in 1877, when he first knew the land.

JAMES M. MASON,
For Interpleaders and Opponents to Motion to Amend Attachment Return.

The fact is, the deputy sheriff, Ryus, must have located that land 20 feet or probably much more north of where it was, as the evidence of several of the affiants to it, of Mason, No. 3; J. S. Campbell, No. 7, and George Alltop, No. 9; Hiram Akers, No. 15; Willis Wills, No. 16; Enos Long, No. 17; Synthia Long, No. 18; William Glenn, No. 19, and others go to show that there were stumps 20 feet or more north of this land, and these evidently were the stumps that Ryus, Drought, and Sol. Balmer speak of.

The first stumps they would naturally encounter after leaving the iron bridge, and here is where they stopped and posted, if anything, what they posted, supposing themselves to be on the land when in fact they were not, and this perfectly ties and harmonizes with the evidence of the witnesses who testify to the house being at the time on the westerly side of Wood street extended, near the southerly line of this land, because if Ryus by mistake located this land too far north this would leave the house off of the land. All this evidence can produce one impression, that Ryus located this land too far north and posted on stumps, if at all, too far north, and therefore not on the attachment claim at all. But, not being on the land, it is wholly void for this reason if for no other.

Respectfully submitted.

J. M. MASON, *Attorney.*

We hereby accept service of the *written* and foregoing briefs and argument this 19th day of February, 1883.

PRATT, BRUMBACK AND FERREY.

Filed February 20th, A. D. 1883.

L. C. TRICKEY, *Clerk.*

394 Map of Kansas City, Kansas, with affidavit, 368½, 356½.

395 Defendants next offer in evidence deed from David E. James and wife to James F. Joy.

Which said deed is in words and figures as follows, to wit:

[U. S. revenue stamp.]

This indenture made this 24th day of August, A. D. 1868 between David E. James and Jennie M. James, both of the city of Wyandotte county of Wyandotte, and State of Kansas, parties of the first part, and James F. Joy, of the city of Detroit, county and State of Michigan party of the second part, witnesseth:

That the said parties of the first part for and in consideration of the sum of one thousand dollars ($1,000), to the said parties of the first part paid, the receipt whereof is hereby acknowledged, hath and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm unto the said party of the second part, and to his heirs and assigns forever, the following lots, or parcels of land, situate in the city of Wyandotte, county of Wyandotte, and State of Kansas, described as follows, to wit:

Beginning at a point on the bank of the Missouri river, north fifty (50) degrees and twenty-five (25) minutes west four hundred and thirteen and one-half (413½) feet, and north fifty-nine (59) degrees and five (5) minutes west three hundred and eighty and a half (380½) feet, and north sixty-two (62) degrees and five (5) minutes west four hundred and ninety-eight and five-tenths (498.5) feet from a point on the State line fifteen hundred and eighty-two and a quarter (1,582¼) feet, from the southeast corner of section number eleven (11), township eleven (11), range twenty-five (25); thence south sixty-one and one-half (61½) degrees west four hundred and seventy-nine and seventy-one hundredths (479.71) feet; thence north twenty-eight and one-half (28½) degrees, west ten hundred and eighty-six (1,086) feet; thence north sixty-one and one-half (61½) degrees, east three hundred and fifty-eight (358) feet to the bank of the Missouri river; thence south twenty-three (23) degrees and thirty-two (32) minutes east, three hundred and forty-five and thirty-four hundredths (345.34) feet; thence south thirty-seven (37) degrees and eleven (11) minutes east, two hundred and seventy-nine *feet* and a quarter (279¼) feet; thence south forty (40) degrees and forty-five (45) minutes, four hundred and seventy-six and five-tenths (476.5) feet to the beginning, containing ten (10) acres and being part of lot on plat in partition No. 15 on file in the clerk's office of the first judicial district of Kansas, in the county of Wyandotte, in the case of Thomas Ewing, Jr., *vs.* William Weer *et al.*, numbered and described as will more fully and at large appear, by reference to the plat of said city, recorded in the register's office, in and for said county in Book of Plats page three, together with all, and singular, the buildings, and improvements, rights, liberties, privileges and appurtenances, belonging or in any manner thereto appertaining.

And also the remainders, rents, issues and profits thereof, and all

the right, title and interest of said party of the first part in and to the same or any part thereof.

To have and to hold the said described premises and hereditaments hereby granted and described with the appurtenances unto the said party of the second part, his heirs and assigns to their only proper use and behalf forever.

And the said parties of the first part hereby covenant and agree with the said party of the second part, his heirs and assigns
396 that the said premises are free and clear from all incumbrances whatsoever, and the said parties of the first part will, and their heirs and executors and administrators, shall warrant and defend the same to the said party of the second part and his assigns against the lawful demands of all persons.

In testimony whereof the said party of the first part have hereunto set their hands and seals the day and year first above written.

D. E. JAMES. [SEAL.]
JENNIE M. JAMES. [SEAL.]

Signed, dealed, and delivered in the presence of—
A. B. BARTLETT.
HAVELLY JAMES.

STATE OF KANSAS, } ss:
County of Wyandotte, }

On this twenty-fourth day of August, A. D. 1868, before me, a notary public in and for said county, came David E. James and Jennie M. James, personally known to me to be the same identical persons who executed the foregoing deed as party of the first part, and acknowledged the same to be their own voluntary act and deed for the purposes therein mentioned; and the — Jennie M. James, having been by me made acquainted with the contents and effect of said deed and by me examined separate and apart from her husband, acknowledged that she executed said deed and relinquished her right of dower in the premises therein described freely and voluntarily and without the compulsion of her husband.

In testimony whereof I have hereunto set my hand and affixed my seal of office.

[SEAL.] A. B. BARTLETT,
Notary Public.

397 STATE OF KANSAS, } ss:
Wyandotte County, }

I, Daniel O'Flaherty, do hereby certify that I was called on by D. E. James and Geo. B. Wood to survey certain lands lying in Wyandotte county, Kansas, between the State line and the mouth of the Kansas river, and that I surveyed said lands in the presence of D. E. James, Geo. B. Woof, and platted the land to be deeded by said D. E. James to James F. Joy and intended to be incorporated and conveyed to said Joy by said James in the deed hereto annexed,

and I do hereby certify that the land hereby described on the plat is — identical land I so surveyed and which was intended to be so surveyed.

DAN. O'FLAHERTY.

(Here follows diagram marked page 397.)

398 Defendants next offered in evidence a copy, duly certified, of a deed from David E. James and wife to Joseph E. Snyder, of date April 27th, 1864.

Which said deed is in words and figures as follows, to wit:

This indenture made this 27th day of July in the year of our Lord one thousand eight hundred and 64, between David E. James and Jennie M. James his wife of the first part, and Joseph E. Snyder of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed, and acknowledged, *has* granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, heirs and assigns forever—

Commencing at a point north 28½ degrees, west 3,604½ feet from the southeast corner of section eleven (11) township eleven (11) range twenty-five (25) in the county of Wyandotte and State of Kansas, thence south 61½ degrees west six hundred and forty feet two inches, (640.2); thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and a half (61½) degrees east eight hundred and seventy-one feet two inches (871.2); thence along the southwest bank of the Missouri river, north twenty-eight and one-half (28½) degrees west, three hundred (300) feet; thence south sixty-one and a half degrees west two hundred and thirty-one (231) feet to the place of beginning, containing six acres together with all and singular the herr*idit*iments and appurtenances thereunto belonging or in anywise appurtaining. And the reversion and reversions, remain-er, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, demand whatsoever of the said party of the first part either in law or in equity of, in and to the above-bargained premises, with the herr*idit*iments and appurtenances.

To have and to hold the said premises as above described with the appurtenances, unto the said party of the said second part and to heirs and assigns forever.

In witness whereof, the party of the said first part have hereunto set hand- and seal- the day and year first above written.

DAVID E. JAMES.
JENNIE M. JAMES.

Sealed and delivered in the presence of—
F. S. PARKER.
TRACY W. ROOT.

STATE OF MICHIGAN, } ss:
Washtenaw County, }

On this 2nd day of August, 1864, before me, the subscriber, clerk of the circuit court of the county of Washtenaw aforesaid, personally appeared David E. James and Jennie M. James, to me personally known to be the identical persons described in and who executed the within conveyance, and acknowledged the instrument to be their own and voluntary act and deed; and the said Jennie M. James, on an examination apart from her husband, being
399 first made acquainted with the contents of such conveyance, acknowledged that she executed the same and relinquished her dower in the real estate therein mentioned freely and without any fear or compulsion of her said husband.

[SEAL.] TRACEY W. ROOT, *Clerk.*

[U. S. revenue stamp.]

Recorded October 23rd, A. D. 1868, 9 a. m.

JAMES A. CRUISE,
Register of Deeds.

Record L, 135 and 136.

400 Defendant- next offered in evidence a certified copy of a deed from David E. James and wife to Joseph E. Snyder, dated April 13, '69:

[U. S. rev. stamp.]

This indenture made this 13th day of April, in the year of our Lord one thousand eight hundred and sixty-nine, between David E. James and Jennie M. James, his wife, of the first part, and Joseph E. Snyder party of the second part, witnesseth:

That the said party of the first part in consideration of the sum of one dollar, to them duly paid has sold and by these presents do grant and convey unto the said party of the second part, his heirs and assigns, all that tract or parcel of land, situate in the county of Wyandotte, and State of Kansas, and described as follows, to wit:

Variation eleven (11) degrees east, beginning at the southwest corner of a tract of land conveyed by said James to James F. Joy, and now known as railroad land, said southwest corner being the northwest corner of a certain parcel of land now owned by said James: —; thence running south sixty-one (61) degrees fifty (50) minutes, west, five hundred and eighty and eight-tenths (580.8) feet; thence south twenty-eight (28) degrees ten (10) minutes east three hundred (300) feet; thence sixty-one (61) degrees fifty (50) minutes east, five hundred and eighty and eight-tenths (580.8) feet; thence north twenty-eight (28) degrees ten (10) minutes west, three hundred (300) feet to the place of beginning, and all to contain four (4) acres. Said land being in township eleven (11), range twenty-five (25) in the above-mentioned county and State.

This conveyance is made subject to the payment of a mortgage of fifty dollars ($50.00) per acre given to Silas Armstrong by said James.

Also, subject to the payment of one hundred and twenty-five ($125) due to C. F. Welland on or before May 12th, 1869, with interest at ten (10) per cent. per annum.

Also taxes due now upon above-described land amounting to seventeen dollars and fifty cents ($17.50) more or less. With the appurtenances and all the estate, title and interest of said party of the first part therein.

And the said David E. James and Jennie M. James his wife do hereby covenant and agree that at the delivery hereof, they are the lawful owner of the premises above granted, and seized of a good and indefeasible estate of inheritance therein. And that they will warrant and defend the same in the quiet and peaceable possession of said party of the second part his heirs and assigns forever.

Witness whereof, the said party of the first part has hereunto set their hand and seal the day and year above written.

D. E. JAMES.
JENNIE M. JAMES.

Executed and delivered in the presence of—
GEORGE B. WOOD,
E. B. POND,
B. R. PORTER,
For Mrs. James.

STATE OF KANSAS, } ss:
County of Wyandotte, }

On the 13th day of April, 1869, before me, a notary public in and for said county, came David E. James, to me personally known to be the same person who executed the foregoing instrument, and duly acknowledged the execution of the same.

In testimony whereof I have hereunto subscribed my name and affixed my official seal the day and year last above written. All interlineations made before signing.

M. B. NEWMAN,
Notary Public. [SEAL.]

401 STATE OF MICHIGAN, } ss:
County of Washtenaw, }

On this 17th day of April, A. D. 1869, before me, the county clerk in and for said county, came Jennie M. James, to me personally known to be the same person who executed the foregoing instrument, and duly acknowledged the same.

In testimony whereof I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

All interlineations made before signing.

JOHN J. ROBINSON, *Clerk.* [SEAL.]

[U. S. rev. stamp.]

Recorded February 5th, A. D. 1870, at 11 a. m.

JAMES A. CRUISE, *R. D.*

56—145

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, W. H. Bridgens, register of deeds in and for the county and State aforesaid, do hereby certify that the foregoing is a true and correct copy of an instrument of writing filed in this office February 5th, 1884, at 11 o'clock a. m., as the same appears of record, volume M, page 50.

Witness my hand and the official seal this 28th day of October, 1884.

W. H. BRIDGENS,
Register of Deeds. [SEAL.]

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, W. R. Wagstaff, judge of the tenth judicial district of the State of Kansas, president judge of the district court of said county, do hereby certify that W. H. Bridgens, by whom the above attestation was made, was at this date thereof register of deeds of said county, duly qualified, and that the same is in due form of law and made by the proper officer.

Dated November 5th, A. D. 1884.

W. R. WAGSTAFF.

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, L. C. Trickey, clerk of the district court in and for the said county, do hereby certify that Hon. W. R. Wagstaff, whose genuine signature is subscribed to the foregoing certificate, was at the date there- president judge of said court, duly commissioned, sworn, and acting.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at the city of Wyandotte, this 5th day of November, A. D. 1884.

L. C. TRICKEY, *Clerk,*
By M. J. TRICKEY, *Deputy.* [SEAL.]

Service of the foregoing case made for the supreme court by the defendants in the district court is hereby accepted from James M. Mason, attorney for the defendants in the district court, — by Jefferson Brumback, attorney for the plaintiff- in the district court, this 29th day of August, A. D. 1887; and it is hereby agreed between the parties to the action that said plaintiffs in the district court or their attorney may suggest amendments to such case and present same to said defendants in the district court or their attorney on or before Sept. 20th, A. D. 1887, without any order of the court or judge extending time therefor.

Aug. 29th, 1887.

JEFFERSON BRUMBACK,
Attorney for Plaintiffs in Dist. Court.
J. M. MASON,
Attorney for Defendants in District Court.

402 Defendants next offered in evidence the record and plat in the partition suit, No. 911, in the Wyandotte county district court, of Thomas Ewing *et al. vs.* William Weer *et al.*, which plat and record have already been introduced in evidence.

(See Record, pages 36 to 75, inclusive.)

By Mr. MASON: "If the court please, we now offer in evidence the original bill and answers as filed in the United States circuit court for the district of Kansas, in case No. 4668, and also the certified transcript, which contains the petition and answer in the district court of Wyandotte county, and from which county said cause was removed to the circuit court of the United States, to show what the issues were on which these depositions were taken. This was the case in the United States circuit court between these same parties."

Gen'l BLAIR: "We object to the depositions, your honor, but we have no objections to the bill and answers."

Mr. MASON: "We will first read the deposition of Henry R. Seegar, taken on the 3rd day of April, 1880, between the hours of eight (8) o'clock a. m. and six o'clock p. m. of that day."

Objected to by plaintiffs' counsel because incompetent, irrelevant, and immaterial; which objection was by the court overruled; to which ruling of the court the plaintiffs at the time excepted.

The deposition of Henry R. Seegar was in words and figures following, to wit:

403 *Deposition of Henry R. Seegar.*

Streets all 60 except James, Armstrong, and 6th street; from James St. to State line they are 80; Pacific Ave., 70; alleys 16 ft.; R. R. alley, 30; alley north of lot 259, 60; 18 lots 24 x 120 except 61, 62, & 25, 120; lots 77, 78, 37½ by 120; lots in Bigger's add., 25 by 125.

Map of Kansas City, 1875.

Seegar.

(Here follows diagram marked p. 403.)

404 Depositions of witnesses produced, sworn to, and examined on the 3rd day of April, 1880, between the hours of eight o'clock a. m. and six o'clock p. m., at my office, in the city of Kansas, county of Jackson and State of Missouri, before me, John H. J. Fenton, notary public within and for said county and State, on a certain cause now depending in the district court of Wyandotte county, Kansas, between George W. Tourtelotte and George P. Allcutt, plaintiffs, and Charles Wilkins, John Spering, William Willis, Nicholas McAlpine, and James M. Mason, defendants.

James M. Mason attended as attorney for defendants and J. Brumback as attorney for plaintiffs.

HENRY R. SEEGAR, of lawful age, being produced, sworn, and examined on the part of defendants, testified as follows:

I am fifty-six (56) years of age; reside in Kansas City, Missouri; am an instrument-maker. Joseph E. Snyder was a brother-in-law of mine. He resided in Kansas City; have known him twenty-eight (28) years, about. I found accidentally a title bond in my safe in my name from David E. James to me about 1862; title bond was for ten (10) acres and made over to me in lands between Missouri river and State line, called Armstrong's land. Weer, Armstrong, and James owned it.

The title bond was for benefit of Joseph E. Snyder. Snyder made a trade with Gladden for his, Gladden's, claim, which he had in the bottom, and gave Gladden eighty (80) acres in Garden City, Kansas.

James made a trade with Snyder. Snyder gave James the Gladden property and James made a title bond in my name for the ten (10) acres. Snyder left the title bond run out and afterwards James gave him six (6) acres instead of ten (10)—less than ten (10) acres—because the four (4) acres was to pay off the Armstrong claim.

J. Brumback, attorney for plaintiff-, objects to the foregoing evidence upon the ground that witness cannot give the contents of any papers, as the papers are themselves the best evidence, and that testimony is immaterial and irrelevant.

Q. Was this ten (10) acres that you have spoken of——

(Question withdrawn.)

Q. What other interest in the Armstrong land did Snyder at any time have besides the interest growing out of this bond?

A. I don't know, except that Snyder gave away two acres for riprapping.

Defendant- objects to the latter part of answer on ground that it is not responsive to the question.

Q. What did he get in exchange for his six (6) acres?

A. Four (4) acres.

Q. Do you know the location of that four acres?

A. It is south of the bridge, next to Swope's.

Q. Have you ever noticed plat of Kansas City on file in the office of the register of deeds of Wyandotte county, Kansas?

A. I never was over there. I did not see that map. I went with Mr. O'Flarety and helped him to run the lines and have a copy of the map that Mr. Norman had when we laid out the line.

Q. On that map or plate that you saw did you notice the location of the above-mentioned four (4) acres?

A. I did notice it.

Q. On which side of James street was it located?

A. On the west side.

Objected to by plaintiffs that the map itself is the best evidence and witness cannot testify to contents of it.

A. The four (4) acres were divided in two parts—two acres belonged to Bartlett and Cobb and the two acres to Traber, Traber's two acres on west side of street; cannot remember whether other two acres run over or not, but think both on west side.

405 Q. Did you remember when James F. Joy or the railroad company bought the two acres east of James street?

A. No, sir.

Q. State the reason why Snyder had that title bond put in your name instead of taking it in his own name.

A. I think it was only that to save it for himself, because he was in debt; because he was bankrupt and in debt at that time and had failed; he and his partners. He did not tell.

Q. In 1862 did you know he was in failing circumstances?

A. Yes, sir; certainly.

Q. Were you pretty well posted in his affairs at that time, from 1862 upwards?

A. I only knew what I have told. I commenced a business and engaged him as a watchmaker and attending to the store.

Q. Did he tell you about his affairs at that time?

A. No, sir.

Q. If not, how did you find out about his affairs?

A. From title bond.

Q. How did you find out about his insolvent and bankrupt condition in 1862?

A. He told me that, of course, they took everything away that they had.

Q. Do you know when Snyder filed his petition in bankruptcy?

A. No; he was not with me then.

Q. Do you know that he filed it at all?

Objected to by plaintiffs because the record is the best evidence.

A. I don't know. I heard it.

Q. Well, about the time he went into bankruptcy and his creditors were taking away his goods and property did you know his proceedings?

A. No; I was not in with him; he had business for himself.

Q. When did you first know that he went into bankruptcy?

Plaintiff- objects because question assumes that Mr. Snyder was adjudged bankrupt, and that there is no proof of that fact.

A. I was not on good terms with him and did not bother myself about his affairs.

Q. Did anybody tell you that he was in bankruptcy or was going into bankruptcy?

Plaintiffs object because testimony is hearsay and bankruptcy cannot be proven in that way; evidence is secondary.

A. Well, I heard it accidentally, but cannot tell from whom; believe I saw it in the papers.

Q. Did you see the notice of bankruptcy in the paper, newspaper?

Objected to by plaintiff- because testimony is incompetent, secondary, and irrelevant.

A. I think I saw it in the Journal, Kansas City Journal.

Q. Did you take the Journal?

A. Yes.

Q. How long after the proceedings were commenced or in what year?

Plaintiff- objects as secondary, incompetent, and irrelevant testimony.

A. I don't know; I can't tell.

Q. Who is C. F. Welland?

A. He is a German of wealth and was engaged in the tobacco manufacturing.

Q. Relative of family?

A. Was once; no relative of Snyder.

Q. State whether this C. F. Welland was a particular friend of Snyder and yours or not.

A. I was on good footing with him, and Snyder, too.

Q. Did Snyder have much or any money about him after
406 he got through his bankruptcy?

A. I don't know.

Q. Where did he go?

A. He was here in town. It was about seven (7) years ago he went to Memphis.

Q. Do you recollect Snyder's borrowing some money from Welland?

A. Mr. Welland told me once that he owned the money; can't fix the date, except it was a note. You can find it over there.

Q. Where is Welland now?

A. He is in town—somewhere in the addition.

Q. How came you to authorize Traber J Norman to bring attachments suits against Snyder, against some property or supposed property in Kansas City, Kansas?

Plaintiff- objects because question is irrelevant and incompetent.

A. Mr. Traber told me he was the lawyer for Welland. Mr. Deitsch and Lawyer Trefner brought suit against Snyder for the claims that he had two (2) acres over there yet, and I could bring in my claim just as well; so I authorized him; that they would have to pay all costs and I would get something.

Q. How were you to pay Traber and Norman?

A. Was to give them half.

Q. How much did you finally get for your interest in that thing?

A. Forty (40) feet front by 198 or 298 feet long of land.

Q. What did you finally get for that piece?

A. Fifty dollars ($50.00) in cash.

Cross-examination.

By J. BRUMBACK:

Q. Is Joseph E. Snyder alive now?

A. No, sir.

Q. When did he die?

A. Last year, in July (1879), in Memphis.

Q. About what time did he become your brother-in-law?

A. In 1857, I think.

Q. In what year did you find the title bond you have spoken of?

A. I believe it was in 1862.

Q. Where is that bond now?

A. I don't know. Snyder took it away. I believe he gave it back to James.

Q. Was not the bond recorded in the register of deeds' office of Wyandotte county, Kansas?

A. As much as I recollect it was.

Q. Was it not a bond made by David E. James to James Gladden for the sale and conveyance of an undivided ten (10) acres of certain lands in Wyandotte county, Kansas, and by said Gladden assigned and transferred in writing to you?

A. As much as I remember the title was made in my name by James for ten (10) acres. I can't remember whether it was said undivided. I don't remember whether it was said Gladden or not. I only remember it was in my name.

Q. Did not James Gladden have something to do with the giving of that bond by James?

A. Well, just as I said, that Snyder made a trade with Gladden for his claim in the bottom for eighty (80) acres in Garden City and Snyder traded his claim to James for the ten acres.

Q. Did not James Gladden convey or release his claim on the land in the bottom directly to David E. James?

Defendant- object, as the record is the best evidence of such release.

A. I don't know anything about that.

Q. But you do know that James Gladden traded his claim
407 or interest in the land in the bottom to Joseph E. Snyder for eighty (80) acres of land in Garden City?

A. Yes; that is what Snyder told me.

Q. When did he tell you that?
A. During the war time; can't tell the year exactly.
Q. Was it after you found the title bond in your safe?
A. Yes.
Q. You have stated in substance that David E. James and his wife conveyed to Joseph E. Snyder six (6) acres of land in execution of the bond instead of ten (10) acres called for by the bond. Why was only six (6) acres conveyed instead of that?
A. As much as Snyder told me he had to pay for every acre fifty dollars ($50.00) to Armstrong as soon as he sells one acre, and to settle this he received six (6) acres instead of ten (10).
Q. And Mr. James was to pay the fifty dollars an acre to the Armstrong estate and let Mr. Snyder have the six (6) acres clear of the mortgage to Armstrong, securing the fifty dollars ($50.00) an acre?
A. I don't know that James paid it off to Armstrong. I don't know that part.
Q. Well, was Snyder to pay anything to Armstrong?
A. I don't know. I don't believe he paid him anything. He had to settle with James.
Q. Snyder only got six (6) acres instead of ten (10) on account of the claim which Armstrong had for fifty dollars ($50.00) an acre?
A. That is what I understood.
Q. Had the bond been recorded in the register of deeds' office in Wyandotte county, Kansas, before you found it in your safe?
A. I believe so.
Q. Who had it recorded?
A. I don't know; not me.
Q. Who had it made or transferred to you?
A. According to the handwriting it must have been James.
Q. That is, it was written by Mr. James?
A. Yes.
Q. Did you get him to write it?
A. No, sir.
Q. Who did?
A. I don't know. I believe Snyder.
Q. Did Snyder tell you that he had the bond made or transferred to you?
A. When I saw the bond I asked him what that bond means and he told me that he couldn't keep the property in his own name.
Q. And he wanted you to hold it and for his use and benefit?
A. Yes, sir.
Q. And you did hold the bond accordingly, did you, and did with it just what Mr. Snyder asked you to do?
A. Mr. Snyder told me just to let it lay in the safe.
Q. Was the talk between you and Snyder had at the time you found the bond in the safe in 1862?
A. Yes, sir; afterwards.
Q. How long afterwards?
A. The same day I found it.

Q. How long after that was it that the deed for the six (6) acres was made to Joseph E. Snyder in execution of the bond?

A. I can't tell.

Q. Did you not release this bond on the making of the deed by James and wife to Snyder for the six (6) acres of land?

Defendants object; that record is the best evidence.

A. I remember that James or somebody gave me a quit-
408 claim deed to sign. I believe it was Mr. James. I remember now. I cannot tell in which year.

Q. Did you sign that quitclaim deed?

A. Yes, sir.

Q. Did you then give it to Mr. James?

A. He waited until it was signed.

Q. And then he took it away with him, didn't he?

A. Yes, sir.

Q. Do you know what he did with it? If so, state.

A. No, sir.

Q. Did not Joseph E. Snyder and R. Sakes sign that quitclaim deed as witness- to your signature?

A. I can't remember; but at that time Mr. Sackes was in my store, engaged by me.

Q. Did not Joseph E. Snyder, ask you to sign that quitclaim deed and was he not present when you did sign it?

A. I really can't remember that—how it was; it was too long ago.

Q. What was done with the bond at the time you signed the quitclaim deed?

A. I don't know. I believe he gave it to James.

Q. That is, you mean Mr. Snyder gave it to James?

A. Yes, sir; I think so, of course. I didn't do it.

Q. Did the quitclaim deed you signed state anything about the making of the deed to the six acres by James and wife to Joseph E. Snyder; and, if so, what did it state, as you now recollect it?

Objected to by plaintiff-, as record is the best evidence.

A. I can't tell anything more. I can't tell that; it is too long. I have no particular interest.

Q. Why did you make the quitclaim deed?

A. I made the quitclaim deed. I know I had no interest to the land.

The plaintiff- and defendant- admit that the bond referred to by the witness is recorded in the register of deeds' office of Wyandotte county, Kansas, in Book A, 462, and quitclaim deed referred to by witness is recorded in same office, in Book M, 207, and that either party may use the records in place of the original documents, so far as the originals are competent, for relevancy or incompleteness of originals.

J. BRUMBACK,
Attorney for Plaintiffs.
J. M. MASON,
Attorney for Defendants.

Q. State when the deeds of James and wife was delivered to Joseph E. Snyder for conveyance of the six (6) acres in execution of that bond.

A. I don't know; never saw the deed. We were not together at that time.

Q. Do you know anything about Joseph E. Snyder and his wife conveying back the same six acres to David E. James?

A. No, sir.

Q. Do you know anything about David E. James and his wife conveying by deed to Joseph E. Snyder four (4) acres of land in the bottom between the Kansas river and the Missouri river, and situated in Wyandotte county, Kansas, in the year 1869?

A. All that I know about that is that Snyder told me he had to give two (2) acres for riprapping.

Objected to as irrelevant and incompetent by defendant-.

Q. When did he tell you that?

A. It was at the time when the railroad company commenced riprapping.

Q. Was that not in the year when you signed the quitclaim deed?

A. I can't tell. I don't remember what year it was.

W. Where is the copy of the map or plat you spoke of in
409 your examination-in-chief that you got from Mr. Norman?

A. I have that at home; you can have that at any time.

Q. Do you now have the copy of the map or plat mentioned by you in your examination-in-chief? If so, please attach same to your deposition.

A. Here it is.

Witness produced map or plat, and the same is hereto annexed, marked Exhibit "A."

Q. On your examination-in-chief you spoke about not being on good terms with Joseph E. Snyder; please state when you ceased being on good terms with him.

A. It was about eight (8) years back, or in that neighborhood.

Q. Was it after you went on a bond, as his security, to Charles G. Hopkins for four hundred dollars ($400)?

A. It was after that.

Q. How much did Joseph E. Snyder owe to C. F. Welland?

Objected to by defendant- as irrelevant.

A. I don't know; about the neighborhood of two hundred dollars ($200).

Q. Mr. Mason has asked you about your bringing an attachment suit against Joseph E. Snyder in Kansas, and having land attached there as the property of Snyder. State whether said Snyder was indebted to you at the time you had such suit brought; and, if so, on what account and about how much.

Objected to by defendant- as irrelevant and incompetent.

A. Yes, sir, on account; I had to pay bond that he owned to Hopkins and costs, about five hundred and sixty or six hundred dollars ($560) or ($600); altogether amounts to about seven hundred dollars ($700).

Q. Did Joseph E. Snyder reside or live in the State of Kansas at the time you had your attachment suit commenced?

Objected to as incompetent by defendant-.

A. No, sir; he was living in Memphis, Tenn.

Q. State, if you remember, the year Mr. Snyder went to Memphis to live.

A. I believe it was about five (5) years; between six (6) and seven (7) years, I think.

Q. Had Mr. Snyder ever resided or lived in the State of Kansas?

A. He was about four (4) weeks in Garden City; can't tell; don't know; he was out there in 1858, about; did not have his family there.

Q. In what year did Mr. Snyder fail in business and have his goods seized?

A. It was in 1858.

Q. You stated, in answer to Mr. Mason's question, that you got for your interest in the attachment proceedings a lot forty (40) foot front by 198 or 298 feet long; state whether or not a deed was made to you for that lot.

A. Mr. Traber made me a deed for that lot, and I afterwards sold it for fifty dollars ($50.00).

Redirect examination by Mr. MASON:

Q. You say that Snyder received from James first six (6) acres for his title bond of ten (10) acres?

A. That is what he told me.

Q. Afterwards he received four (4) acres and exchanged for these six (6) acres?

A. I don't know about the exchange; he got four (4) acres at last.

Q. This four acres that he got and you refer to is the land marked on the plat annexed as Traber, Cobb and Bartlett?

A. Yes, sir.

Q. Was this four acres that you speak of the final settlement between Snyder and James?

A. That is the way I understood it.

410 Q. And that four (4) acres that you speak of grew out of and was the final settlement of the rights acquired by Snyder under the title bond above alluded to?

Plaintiff- objects because the question as leading and irrelevant and incompetent and calls for the opinion of the witness and not the facts.

A. I have never heard that he got anything else.

Q. Did he finally get that under such final settlement?

Plaintiff- objects because incompetent and irrelevant.

A. So I heard; I didn't examine title over there.
Q. Who told you so?
A. I heard it when Traber told me he had got land over there.
Q. Did Snyder tell you so?

Plaintiffs object to question as incompetent, irrelevant.

A. Snyder told me that he had four acres, but he did not tell me where it lay.
Q. Did Snyder tell you what he gave for that four acres?

Plaintiff- objects as incompetent and irrelevant.

A. I can't tell anything else; I never asked.
Q. What did Snyder tell you he gave for the four (4) acre claim above mentioned, meaning the four (4) acres he finally got?

Plaintiffs objects as irrelevant and incompetent.

A. Didn't ask him; he told me nothing about it.
Q. Didn't he tell you anything about it?
A. No, sir.
Q. How did you know, then, that it was in final settlement of the Gladden matter?
A. I don't know; I had nothing to do with it.
Q. Will you please state in narrative form how said Snyder became entitled to his said claim to the said four (4) acres marked Cobb and Bartlett and Traber in said plat?

Objected to by plaintiff-. Witness has said he did not know, has no personal knowledge.

A. I was never present at this transaction.
Q. In a former answer you say that you heard that said four (4) acres was given in final settlement of said title bond; now, how did you hear this and from whom?

Plaintiffs object as incompetent and irrelevant.

A. I don't believe I said in final settlement.
Q. In a former answer you say that this four (4) acres spoken of you understood was given to Snyder in final settlement between Snyder and James; how is it that you so understood it?
A. I never heard that he got anything else; I can't tell anything more.

HENRY R. SEEGAR.

Subscribed and sworn to before me this 3rd day of April, A. D. 1880.

JOHN B. J. FENTON,
Notary Public, Jackson County, Mo. [SEAL.]

STATE OF MISSOURI, } ss:
County of Jackson, }

I, John B. J. Fenton, notary public within and for said county and State, do certify that in pursuance of the annexed notice came

before me, at my office in Kansas City, county and State aforesaid, Henry R. Seegar, who was first sworn by me to testify the truth, the whole truth, and nothing but the truth of his knowledge touching the matter in controversy aforesaid.

That he was examined and his examination reduced to writing by me in his presence and was subscribed by him in my presence on the day, between the hours, and at the place in that behalf first aforesaid, and that said deposition is now herewith returned.

411 Given at my office, in Kansas City, Jackson county, Missouri, this 3rd day of April, 1880.

JOHN B. J. FENTON,
Notary Public, Jackson County, Mo. [SEAL.]

STATE OF KANSAS, *Wyandotte County,* } *ss:*

In the District Court of the Tenth Judicial District of the State of Kansas, Sitting in and for said County and State.

GEORGE W. TOURTELOTTE and GEORGE P. ALLCUTT, Plaintiffs,
vs.
CHARLES WILKINS, JOHN SPERING, WILLIAM WILLIS, NICHOLAS MCALPINE, and JAMES M. MASON, Defendants.

The plaintiffs above named will take notice that on —, the 3rd day of April, 1880, the defendants above named will take depositions of sundry witnesses to be used as evidence on the trial of the above cause in the above-mentioned court on behalf of defendants; said deposition- to be taken at the office of J. B. J. Fenton, No. 106 West 5th street, in the city of Kansas, Missouri, county of Jackson.

Said deposition- to be taken between the hours of eight (8) o'clock a. m. and six o'clock p. m. of said day, and that the taking of the same will be adjourned from day to day between the same hours until said deposition- *is* completed.

JAMES M. MASON,
Attorney for Defendants.

Service of a copy of the above notice acknowledged and time waived by us this 1st day of April, 1880.

PRATT, BRUMBACK AND FERREY,
Attorneys for Plaintiff-.

File-marks: District court, Wyandotte county, Kansas. George A. Tourtelotte and others *vs.* Charles Wilkins and others. Notice to take depositions for defendants.

File-mark: 2547. District court, Wyandotte county, Kansas. George Tourtelott and others *vs.* Charles Wilkins and others. Notary's fees, $10.00. Opened by request of defendants, J. M. Mason, and filed April 5th, 1880. G. W. Betts, clerk.

Mr. MASON: "We next offer in evidence the deposition of Dr. George B. Wood."

Judge BRUMBACK: There is a great deal in these depositions which is objectionable as hearsay testimony and statements as to what Snyder said afterwards.

The court overruled the objection and permitted the deposition to be read; to which ruling of the court the plaintiffs at the time excepted.

The deposition of George B. Wood is in words and figures following, to wit:

412 Deposition of Geo. B. Wood, taken, upon proper notice, before John S. Cox, a notary public for the county of Wyandotte, Kansas, on the 3rd day of December, 1880, after ten (10) o'clock a. m., to be used in the case of Tourtelott *et al. vs.* Wilkins *et al.*, in the Wyandotte district court.

GEORGE B. WOOD, of lawful age, being by me first duly examined, cautioned, and solemnly sworn to testify the truth, the whole truth, and nothing but the truth, deposeth and says:

Q. Were you present at any time when a deed in blank as to description of real estate was filled in by Jos. E. Snyder; if so, from whom and to whom was that deed, with its date, as near as you can recollect; when and where was it so filled in, and for what land?

A. No; I was not present.

Q. Did you hear Snyder say he had filled in any such blank deed?

Plaintiff- objects as incompetent, irrelevant, and leading.

A. Yes, sir; I did.

Q. When and where did he say so and under what circumstances?

Same objection as above.

A. To me, in his jewelry store, in Kansas City, Missouri, in the fall of 1868. Some years previous to 1868 a contract was made between David E. James and Jos. E. Snyder by which Snyder was to have deeded to him by James six (6) acres of land lying on the Missouri river, being a part of Armstrong's reserve No. 1. This was a verbal contract at the time. Very soon afterwards a blank deed was made to Snyder by James and wife; my impression was that the deed was a blank as to description and grantee's name. That was about all I know of this transaction until the year 1868. In 1868 Mr. James and myself, with others, undertook and made a contract with Joy and company to riprapp the Missouri river from the mouth of the Kansas river to the State line, in consideration of which in part the property owners were to donate certain lands in this reserve No. 1. Mr. James deeded as his portion lands lying on the Missouri river between the mouth of the Kansas river and the State line. I and others also donated lands. Subsequent to the contract made with Joy and company Mr. James went to Michigan

to visit his family. During this absence of Mr. James Mr. Snyder came to me in Wyandotte and said he had been informed that Mr. James had deeded as his portion to Joy and company all this land mentioned. I told him that was my understanding. He asked me what James was going to do with him about his, Snyder's, six (6) acres lying on this part of the Missouri river. I told him that I did not know, as that was his and James' matter. A short time after this conversation I was in his, Snyder's, store, in Kansas City, Missouri. The subject of the above land was then and there brought up. In conversation he stated to me that he had waited to get his title perfected to this land; that he intended now to have his blank deed—the one heretofore alluded to—filled up. He produced the deed, which he had there, and showed it to me. I begged him not to fill it up for two particular reasons. The first was that it might complicate arrangements made with Joy and company so as to prevent the riprapping during the following year, to the damage of the parties in interest; the second reason was on his own account. I said, If you should fill up this deed, it being of prior date to your going into bankruptcy, not having scheduled this property, it may lay you liable to prosecution for perjury. He replied he had no fears of that; that he intended to fill up the deed, which he subsequently did; and a short time afterwards I was there again for the purpose of impressing
413 him with the importance not to fill it. He said that it was too late, that he had filled the deed, and then and there showed it to me. This was, I think, if I am not mistaken, in the fall of 1868. James had received money and assistance at different times from Snyder, for which a verbal understanding was that Snyder was to have ten (10) acres of land on this reserve No. 1 on the State line near the present Missouri Pacific freight-house. About the summer of 1863 it became apparent to some of us that a railroad would very soon be built from the State line up the Kansas river. James concluded that he would change Mr. Snyder's position in regard to this land, and instead of giving it to him then he made an arrangement with Mr. Snyder to take six (6) acres on the Missouri river in lieu of the ten (10) before mentioned. About the time the riprapping had been completed, about 1869, another arrangement was made between James and Snyder by which Mr. Snyder was to receive four (4) acres entirely off and outside the aforesaid lands deeded to Joy and company or to James F. Joy towards the Kansas river in the southwesterly direction. I think this four (4) acres in lieu of the six (6) to two (2) acres of the six (6) having been taken from Mr. Snyder's portion of the riprapping. The deed filled up was intended to cover the six (6) acres on the Missouri river. Deed shown to witness in Book L, page 135, of the records of Wyandotte county, he thinks is the deed referred to or, to his best recollection, is one similar to the one filled up by Snyder. He first saw the deed in 1868. My impression is it was blank in description and name of grantee. In 1866 or 1867 a partition suit of Ewing *et al.* was brought against Weer and others. Prior to that time James only had an undivided interest

in this reserve. Mr. James was very much incensed at Snyder's filling up the deed aforesaid. This four (4) acres is between James street and the Kansas river, bordering on the southwest side of James street, in Kansas City, Kansas.

Cross-examination:

This four-acre lot adjoins the land which James conveyed to Joy and cornered with it and lies between it and the Kansas river. Blank deed was intended to be filled up to cover six (6) acres of land on the Missouri river. Snyder received the deed with right to fill it whenever it became necessary for his own interest to do so. In case of James' death or other causes that might make it necessary to secure Snyder the land alluded to above.

That he heard the arrangement talked over between Snyder and James. James was incensed against Snyder for filling out the deed, because it complicated matters with Joy, but did not to me deny his authority to fill the deed.

Re-examination, direct:

Don't remember that there was to be any particular six (6) acres of land filled in that deed, but it was to be on the Missouri river. Part of the six (6) acres above mentioned was previous to the filling of the deed by Snyder deeded to James F. Joy by James.

Do not know that James agreed to his filling the deed with this particular six (6) acres, but do know it was to be on the Missouri river between the mouth of the Kansas river and the State line. When Mr. James came back from Michigan he was incensed against Snyder for filling in this deed with the particular six (6) acres, because it complicated matters with Joy, and then made the exchange of this four acres for the six two acres having gone for riprapping.

Re-examination:

The deed of James to Joy above mentioned was left in escrow with the National Bank of Kansas City, and was not to be delivered until the riprapping was finished, and, to the best of my recollection, was delivered in 1869.

414

GEORGE B. WOOD.

To which deposition is attached the proper certificates, seal, and signed.

JOHN S. COX,
Notary Public.

Endorsed: Filed Oct. 15th, 1885. B. M. Curtis, clerk.

Defendants next read in evidence the transcript, duly certified, from the records of the Wyandotte district court, which was removed to and filed in the circuit court of the United States for the district of Kansas, showing original petition and answers in injunc-

tion suit in said district court. This is the case in which after the same was removed to the United States circuit court the original bill of complaint and answers were filed by the parties to this suit.

Plaintiffs objected to the same as irrelevant, incompetent, immaterial, and because they were not parties. Overruled.

Said certified transcript is in words and figures following, to wit:

415 In the District Court of Wyandotte County, Kansas.

NICHOLAS MCALPINE and JAMES M. MASON, Plaintiffs,
against
TERESA SNYDER, JAMES D. SNYDER, EUGENE SNYDER, and FRED. SNYDER and CASPER SNYDER, Defendants.

And now comes the plaintiffs and say that they have a legal and equitable estate in and are the owners of the following-described premises, to wit:

Commencing at a point south sixty-one and one-half (61½) degrees west six hundred and forty and two-twelfths (640 2/12) feet from another point north twenty-eight and one-half (28½) degrees west from the southeast corner of section number eleven (11), township eleven (11) south, in range twenty-five (25) east, three thousand six hundred and four and one-half (3,604½) feet, which point of commencement is at the intersection of the north line of allotment number twelve (12) assigned to D. E. James in the certain partition suit No. 911 on the docket of said county with a line running parallel with the easterly line of Wood street extended and at a distance of fifty-four (54) feet therefrom and easterly of said east line of said Wood street extended and then south sixty-one and one-half (61½) degrees west three hundred and forty (340) feet; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east three hundred and forty (340) feet; thence north twenty-eight and one-half (28½) degrees west three hundred (300) feet to the beginning, in all about two and one-half (2½) acres, more or less.

That plaintiffs heretofore and for several years last past have been in the actual and *bona fide* possession of all the said tract of land *and* except a small enclosure situated near the southeastern boundary of said land and on the easterly side of Wood street extended, being a piece of land 54 by 25 feet, — which one Tourtelott claims to have a house erected, and plaintiffs are entitled to the whole of said land.

That for the last three years the plaintiffs, having and claiming full title in fee simple to said premises, have been in the actual possession and occupation of said premises and have had tenants thereon and still have at the present time ten (10) or more families living and dwelling thereon in peaceable possession of the same as tenants of said plaintiffs, who pay a monthly rent to said plaintiffs, and said plaintiffs daily are upon said land and collecting their said rents, building and repairing houses, and exercising other act- of ownership.

That on the 27th day of September, 1883, the defendants, by force and arms and in a stealthy manner, entered upon a small part of said lands, to wit, onto the piece of ground about 14 by 16, fourteen by sixteen, feet in rectangular extent situate and located — its southernly boundary about sixty-three (63) feet north twenty-eight and one-half (28½) degrees west from the southern boundary of said land and larger tract first above described and the easternly face of said tract being about fifty-four (54) feet westerly of the westerly side of Wood street extended, and erected a house thereon and moved into the same, thereby committing a trespass upon the rights of the plaintiffs.

That plaintiffs have been refused admission to said grounds so taken possession of by said defendants, and the defendants unlawfully keep the plaintiffs out of the possession of the same.

416 II. That the defendants have intruded themselves into the possession of said premises by stealth and by force and without the knowledge or consent of the plaintiffs and are about to extend the possession by fencing into an inclosure other grounds adjacent to said tract so taken possession of as aforesaid, all of which is in the possession of the tenants of the said plaintiffs and also of plaintiffs and is the property of plaintiffs and parts and parcel of the tract above described.

That defendants are about to seize upon the possession of the whole of said lands, and in the absence of the tenants of plaintiffs, who are mostly laborers and frequently have to seek work away from home, will seize upon and take possession of all and singular and each of said tenancies and of the whole of said tract whenever an opportunity offers, and there is danger that they will interfere with the fences, buildings, and other erections of the plaintiffs and their tenants located or hereafter located thereon.

That the said defendants intend to seize upon all of the said land and tenements for the purpose of collecting the rents an- profits of the same, amounting to the monthly sum of twenty dollars ($20.00) per month.

That said trespass and wrongs will be attended with irreparable injury to the plaintiffs, and a multiplicity of suits and a long course of vexatious litigations will ensue from the said trespass.

That the plaintiffs are remediless at law and will be put to great expense and trouble for which the law grants no remedy.

That said defendants and each of them are wholly insolvent, and no damages or costs can be recovered against them in case of their final ejectment therefrom.

That the injuries that will arise out of the said acts of trespass as consequences of such acts are of such a nature that they cannot be estimated, and the injuries will be irremediable and the law by reason of the insolvency of the defendants would not afford an adequate remedy.

That the value of the property so taken in possession of by the said defendants is the sum of five hundred dollars ($500.00).

And the value of the property about to be seized upon and of which the defendants are about to sequester the rents in the sum of

ten thousand dollars ($10,000), and the rental value is about five hundred dollars ($500.00) per annum, although at the present it is paying only about twenty dollars ($20.00) per month.

Plaintiffs therefore pray that an order of injunction against the said defendants and each of them be issued restraining them from the committing against the said plaintiffs and upon the said land and upon any part thereof any further acts of trespass pending litigation, and against inclosing or attempting to enclose any portion of the lands so in possession of the said plaintiffs or their tenants, and against encroaching upon any part of said premises against the plaintiffs and interfering in any ways with the tenants of the said plaintiffs and with their possessions, and against placing any other or further houses, fences, or erections on any part of said land for any purpose whatsoever, and also from disturbing upon the property so in possession of plaintiffs and their tenants any fences, houses, or erections now or hereafter to be made or built thereon.

And that on a final hearing hereof this injunction be made perpetual and the defendants be ordered to vacate the possession of said tract of land so seized upon and taken possession of by them, and for such other and further relief as may to the court seem proper.

JAMES M. MASON,
Attorney for Plaintiffs.

417 STATE OF KANSAS, } ss:
County of Wyandotte, }

And now comes Nicholas McAlpine and James M. Mason, plaintiffs herein, and, being duly sworn, depose and say that they have read and know the contents of the above petition, and the same is true.

JAMES M. MASON.
NICHOLAS McALPINE.

Subscribed and sworn to before me on this 28th day of September, 1883.

SOPHIE E. MASON,
Notary Public. [SEAL.]

Temporary injunction allowed as prayed for in the petition upon plaintiffs executing a bond, as required by law, in the sum of one thousand dollars ($1,000), bond to be approved by the clerk of this court.

W. R. WAGSTAFF,
District Judge.

Sept. 29th, 1883.

Endorsed: Petition and order of injunction. Filed Sept. 29th, 1883. L. C. Trickey, clerk, by M. J. Trickey, deputy. James M. Mason, plaintiffs' attorney.

Injunction Bond.

STATE OF KANSAS,
10*th Judicial District, Wyandotte County,* } *ss:*

In the District Court Sitting in and for said County.

NICHOLAS MCALPINE and JAMES M. MASON, Plaintiffs,
vs.
TERESA SNYDER, JAMES D. SNYDER, EUGENE SNYDER, FRED. SNYDER, and CASPER SNYDER, Defendants.

Whereas the said plaintiffs have obtained an order of injunction against Teresa Snyder, James D. Snyder, Eugene Snyder, Fred. Snyder, and Casper Snyder in civil action pending in said above-entitled cause wherein the above-entitled parties are plaintiffs and defendants, as set forth in said title:

Now, therefore, we, Nicholas McAlpine and James M. Mason, as principals, and Russel Armstrong, as surety, hereby undertake, in the sum of one thousand dollars ($1,000), that the plaintiff- shall pay to the said defendants any damages they may sustain by reason of the issuing of said injunction if it should be finally decided that said injunction ought not to *be* have been granted.

JAMES M. MASON.
NICHOLAS McALPINE.
RUSSEL B. ARMSTRONG.

Dated 29th day of Sept., A. D. 1883.

The above undertaking and surety thereto approved by me this 29th day of Sept., A. D. 1883.

L. C. TRICKEY,
Clerk District Court. [SEAL.]

Endorsed: Filed Sept. 29th, 1883. L. C. Trickey, clerk, by M. J. Trickey, deputy clerk.

418 In the Tenth District Court in and for the County of Wyandotte and State of Kansas.

Know all men by these presents that James M. Mason and Nicholas McAlpine, as principal-, and Russel B. Armstrong, as sureties, are held and firmly bound unto the State of Kansas in the sum of fifty dollars ($50.00); for the payment of which we do hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents.

The condition of the above obligation is such that whereas the said Nicholas McAlpine and James M. Mason have commenced their certain civil action in the district court in and for the county of Wyandotte on the 29th day of September, 1883, against Teresa Snyder, James D. Snyder, Eugene Snyder, Fred. Snyder, and Caspar Snyder:

Now, if the said Nicholas McAlpine and James M. Mason shall well and truly pay all costs that may accrue in said action in case they shall be adjudged to pay them, or in case the same cannot be collected from said defendants if judgement be obtained against them *and* that the said Nicholas McAlpine and James M. Mason will pay all costs made by them, then this obligation to be void; otherwise to be and remain in full force and effect.

JAMES M. MASON.
NICHOLAS McALPINE.
RUSSEL B. ARMSTRONG.

Endorsed: No. 3202. Presented, approved, and filed this 29th of Sept., 1883. L. C. Trickey, clerk, by M. J. Trickey, deputy.

Precipe.

Dist. Court, Wyandotte County, Kansas.

NICHOLAS McALPINE and JAMES M. MASON
vs.
TERESA SNYDER, JAMES D. SNYDER, EUGENE SNYDER, and FRED. SNYDER and CASPAR SNYDER.

To the clerk of said court:

Issue summons and writ of injunction, as per order of court, according to law in the above-entitled cause, returnable according to law, directed to the sheriff of Wyandotte county, Kansas.

JAMES M. MASON,
Per S. and Attorney for Nicholas McAlpine.

Endorsed: Precipe for summons. Filed Sept. 29th, 1883. L. C. Trickey, clerk, by M. J. Trickey, deputy. J. M. Mason, attorney for plaintiffs.

Summons.

THE UNITED STATES OF AMERICA.

THE STATE OF KANSAS, } ss:
10*th Judicial District, Wyandotte County,* }

The State of Kansas to the sheriff of Wyandotte county, in said State, Greeting:

You are hereby commanded to notify Teresa Snyder, James D. Snyder, Eugene Snyder, Fred. Snyder, and Caspar Snyder, defendants, that they have been sued by Nicholas McAlpine and James M. Mason, plaintiffs, in the district court of the State of Kansas, sitting within and for the county of Wyandotte, and that unless they answer by the 29th day of October, 1883, the petition of said plaintiffs against them filed in the clerk's office of the court afore-
419 said the same will be taken as true and judgement rendered accordingly.

You will make due return of this summons on the 9th day of October, 1883.

Witness my hand and the seal of said court, affixed at my office, in the city of Wyandotte, this 29th day of September, 1883.

L. C. TRICKEY, *Clerk.* [SEAL.]

STATE OF KANSAS, }
County of Wyandotte, } *ss:*

Received this summons on the 2nd day of October, 1883, at — o'clock — m. and served the same in my county by delivering a true and certified copy of the within summons to the within-named Eugene A. Snyder on the 2nd day of October, 1883. The within-named Teresa Snyder, James D. Snyder, Fred. Snyder, and Casper Snyder could not be found in my county on the 2nd day of October, 1883.

T. B. BOWLING, *Sheriff.*

Fees: Service, .50; copy, .25; mileage, .20; total, .95.

Endorsed: Injunction allowed. No. 3202. District court, Wyandotte county. Summons. Issued September 29th, 1883. Returnable October 9th, 1883. N. McAlpine *et al. vs.* Teresa Snyder *et al.* James M. Mason, plaintiffs' attorney. Filed Oct. 2nd, 1883. L. C. Trickey, clerk, by M. J. Trickey, deputy. Suit brought for temporary injunction as set out in plaintiffs' petition. L. C. Trickey, clerk.

420 STATE OF KANSAS, }
County of Wyandotte, } *ss:*

In the District Court of the Tenth Judicial District of the State of Kansas in and for said County.

NICHOLAS MCALPINE and JAMES M. MASON, Plaintiffs,
vs.
TERESA SNYDER, JAMES D. SNYDER, EUGENE SNYDER, FRED. SNYDER, and CASPAR SNYDER, Defendants.

Answer.

And now come the said defendants and for answer to the plaintiffs' petition in the above-entitled cause say—

1st. That they deny all and singular the allegations in the said petition contained save and except what is hereinafter admitted.

2nd. And for a second and further cause of defense the said defendants aver that they are the owners and are entitled to the possession of said property mentioned in the petition of plaintiffs, and deny that the plaintiffs or either of them have the right of possession of said real estate or any part thereof.

3rd. And for a third and further defense to said petition defendants deny that plaintiffs or either of them have any estate in or to said premises described in said petition or ever had any interest therein.

4th. And for a fourth and further defense to said petition defendants admit that they are in the possession of said premises mentioned in the petition of plaintiffs and that they hold possession of said premises adversely and in hostility to the pretended claim of plaintiffs.

BYRON SHERRY,
Attorney for Defendants.

Endorsed: No. 1302. Nicholas McAlpine *et al. vs.* Teresa Snyder *et al.* Answer. Filed Oct. 27th, 1883. L. C. Trickey, clerk, by M. J. Trickey, deputy. Byron Sherry, attorney for defendants.

In the District Court of Wyandotte County, Kansas.

NICHOLAS MCALPINE and JAMES M. MASON, Plaintiffs,
against
TERESA SNYDER, JAMES D. SNYDER, EUGENE SNYDER, FRED. SNYDER, and CASPER SNYDER, Defendants.

And now comes the plaintiffs and for reply to the answer of defendants say that they deny each and every allegation of new matter in said answer contained, if any there be, and allege that the said possession so by defendants taken of the said tract of land mentioned in the petition by force and stealth and so stated in the petition is not a legal possession whereby an adverse holding can be claimed on the part of said defendants *bona fide*, but is void for all the purposes of legal advantage in favor of said defendants.

JAMES M. MASON,
Per Sec- and Attorney for Plaintiffs.

Endorsed: No. 3202. Nicholas McAlpine and James M. Mason against Teresa Snyder *et al.* Reply. Filed Oct. 31st, 1883. J. M. Mason, att'y for pl't'ffs. L. C. Trickey, clerk, by M. J. Trickey, deputy.

421 In the District Court of Wyandotte County, Kansas.

NICHOLAS MCALPINE and JAMES M. MASON, plaintiffs,
against
TERESA SNYDER, JAMES D. SNYDER, EUGENE SNYDER, FRED. SNYDER, and CASPER SNYDER, Defendants.

Petition for Removal.

The petition of the above-named plaintiffs shows to the court that the above suit was begun against said above-named defendants in the State court, in the district court of Wyandotte county, State of Kansas, on or about the 29th day of September, 1883.

That the matter in dispute in said suit and for which said suit is brought exceeds the sum of five hundred dollars ($500), exclusive of costs, and the defendant- herewith files a bond, with good and sufficient sureties, for his entering into the circuit court of the United States for the district of Kansas, wherein said suit is pending,

on the first day of the next session of said court, a copy of the record in said suit and for paying all costs that may be awarded by said circuit court if said court shall hold that such suit was wrongfully and improperly removed thereto, as provided by law and the statutes of the United States.

That the disputed question in this suit is one that involves the construction of a law of the United States.

That the plaintiffs in this suit claim title to the subject-matter of litigation by virtue of an act of Congress, to wit:

Under the act in regard to bankruptcy, and that the real estate which is the subject of this suit and described in plaintiffs' original petition is claimed by said plaintiffs by virtue of a bankrupt's deed dated October 20th, 1871, and pursuant to a sale in bankruptcy of the bankrupt assets of Joseph E. Snyder in the year 1871.

That the said defendants, as the heirs and representatives of said Joseph E. Snyder, deceased, have recently set up a claim to the real estate in said petition described and the gist of this action is whether or not at the time of said sale in bankruptcy the subject-matter of this action, the real estate described in petition, was or was not assets of said bankruptcy Joseph E. Snyder.

The consideration of which question involves the construction of sections 5044, 5045, 5046, and other sections of said bankrupt act, an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867.

The plaintiffs herein claiming that said property was assets of said bankrupt at that time and that the same was property and regularly sold as such, and the defendants claim a contrary state of facts *in* under the construction of said bankrupt law.

Wherefore the plaintiffs pray this honorable court that said bond may be approved and said suit removed into the circuit court of the United States for the district of Kansas, and that this court proceed no further in the premises.

NICHOLAS McALPINE.
JAMES M. MASON.

Nicholas McAlpine and James M. Mason, being first duly sworn, say that they are the plaintiffs in the foregoing action and have read the foregoing petition subscribed by them and know the contents thereof, and that the same is true of their own knowledge.

Sworn to before me this 5th day of Dec., A. D. 1882.

[SEAL.] CHAS. N. H. MOORE,
Notary Public.

Com. expires Dec. 28, '85.

422 STATE OF KANSAS, } ss:
County of Wyandotte, }

I, L. C. Trickey, clerk of the district court in and for said county and State aforesaid, hereby certify *that* the above and foregoing to be a true copy of the petition for removal in above-entitled cause, as the same appears on file in my office.

Witness my hand and the seal of said court this 14th day of December, 1883.

L. C. TRICKEY, *Clerk*,
By M. J. TRICKEY, *Deputy*. [SEAL.]

Endorsed: No. 3202. Petition for removal to circuit court of United States. Filed Dec. 7th, 1883. L. C. Trickey, clerk. J. M. Mason, attorney for plaintiffs.

Bond for Removal.

Know all men by these presents that we, Nicholas McAlpine and Maria W. McAlpine and D. S. Young, of the city of Wyandotte, county of Wyandotte and State of Kansas, are jointly and severally held and firmly bound to Teresa Snyder, James D. Snyder, Eugene Snyder, Fred. Snyder, and Caspar Snyder, defendants, in the penal sum of one thousand dollars; for which, well and truly to be paid unto said defendants, to their heirs, executors, and administrators and assigns, we bind ourselves, our heirs, executors, and assigns and administrators, by these presents.

Sealed with our seals this 4th day of December, A. D. 1883.

The conditions of this obligation is such that if said Nicholas McAlpine and James M. Mason, in a suit now pending in the district court of Wyandotte county, State of Kansas, shall, on the first day of the next term or session of the circuit court of the United States for the district of Kansas, enter a copy of the record in said suit, and shall enter the appearance of Nicholas McAlpine and James M. Mason in said circuit court of the United States, and shall enter special bail in the cause, if special bail was originally required, and pay all costs that may be awarded against him by said circuit court if said circuit court shall hold that said suit was wrongfully or improperly removed from said State court, then this obligation to be void and otherwise to remain in full force and effect.

In witness whereof the said obligors have hereunto set their hands and seals this 4th day of December, A. D. 1883.

NICHOLAS McALPINE.
MARIA W. McALPINE.
D. S. YOUNG.

STATE OF KANSAS, } ss:
County of Wyandotte, }

On the 4th day of December, A. D. 1883, before me personally came Nicholas McAlpine, Maria McAlpine, and D. S. Young, to me personally known to be the identical persons who executed the above and foregoing instrument, and duly acknowledged the execution of the same for the uses and purposes therein mentioned. Commission expires Dec. 28th, 1885.

CHAS. N. H. MOORE,
Notary Public. [SEAL.]

Endorsed: Filed Dec. 7th, 1883. L. C. Trickey, clerk. Bond, —.

423 THE STATE OF KANSAS, } ss:
Tenth Judicial District, Wyandotte County, }

At a session of the district court, sitting within and for said county of Wyandotte, begun and held at the court-house, in the city of Wyandotte, in said county, on the 3rd day of December, A. D. 1883, as by statute required—there being present Hon. W. R. Wagstaff, judge of said judicial district, and Thomas B. Bowling, sheriff, and L. C. Trickey, clerk of the district court of said county—the following proceedings are had:

SATURDAY, *December 15th, A. D.* 1883.

NICHOLAS MCALPINE and JAMES M. MASON } No. 3202.
vs.
TERESA SNYDER *et al.*

Said plaintiffs having heretofore filed their petition and bond for removal of this cause to the circuit court of the United States for the district of Kansas, said bond and surety thereon are approved, and it is ordered that this court proceed no further herein, and that this cause be removed to said circuit court.

And the clerk of this court is hereby ordered to make transcript to said circuit court, as required by law,—the records in such cause.

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, L. C. Trickey, clerk of the district court in and for said county and State, hereby certify the above and foregoing to be a full, true, and complete record in the above-entitled cause as the same appears on file and of record in my office.

Witness my hand and the seal of said court, affixed at my office, in the city of Wyandotte, this 26th day of May, A. D. 1884.

L. C. TRICKEY, [SEAL.]
Clerk of the Dist. Court, Wyandotte County, Kansas.

Costs in district court, Wyandotte county $8 70
Costs of transcript 6 00

Endorsed: No. 4668. Nicholas McAlpine *et al. vs.* Teresa Snyder *et al.* Transcript of record. Filed May 31st, 1884. A. S. Thomas, clerk.

Defendants next offered and read in evidence the original bill of complaint filed in said cause, No. 4668, in the United States circuit court, which is in words and figures following, to wit:

424 In the Circuit Court of the United States, District of Kansas.

NICHOLAS MCALPINE and JAMES M. MASON, Complainants,
vs.
GEORGE W. TOURTELOTT, GEORGE P. ALLCUTT, LAFAYETTE Traber, Joseph L. Norman, C. F. Welland, Frank Boyle, Widow Mary Boyle, and Alexander Boyle, Jessie Boyle, Daisy Boyle, Minors and Heirs-at-Law of Peter Boyle, Deceased; also Teresa Snyder, Widow of James D. Snyder; Eugene Snyder, Fred. Snyder, and Casper Snyder, Heirs-at-Law of Joseph E. Snyder, Deceased, Defendants.

And now comes the complainants herein, by *his* solicitors, James M. Mason, and move the court here for an order to be served upon defendants, absent from and upon whom service cannot be made within the said district and who have not voluntarily appeared hereto, directing them to appear, plead, answer, or demur to said complainants' bill of complaint, and as a showing for such order complainant- submits the subjoined affidavit.

And complainant- asks as a part of this application to be allowed to file the subjoined petition and bringing in the new parties to this action, as therein mentioned, and recast the pleadings.

UNITED STATES OF AMERICA, *District of Kansas*, } *ss:*

James M. Mason, being first duly sworn, deposes and says that he is one of the plaintiffs herein and solicitor for the other plaintiff in above-entitled cause.

That the above-entitled suit is brought to enforce a claim to and remove a cloud upon certain real estate described in complainants' bill of complaint and situate within the State and district of Kansas.

That the defendants and all of them, except only the defendant Teresa Snyder, are not inhabitant- of nor can they be found within said district of Kansas, and that said defendants do not voluntarily appear to said bill of complaint, and that the residence of the defendants is known, all residing in the State of Missouri.

JAMES M. MASON.

Subscribed and sworn to before me this 3rd day of May, A. D. 1884.

[SEAL.] A. S. THOMAS, *Clerk.*

425 In the Circuit Court of the United States for the District of Kansas for the Year 1884. *Court*

NICHOLAS MCALPINE, JAMES M. MASON, and SOPHIA A. COBB, Complainants,
against
GEORGE W. TOURTELOTT, GEORGE P. ALLCUTT, LAFAYETTE TRABER, Joseph L. Norman, C. F. Welland; also Frank Boyle, Widlw Mary Bo-le, Adult, and Alexander Boyle, Jesse Boyle, and Daisy Boyle, Minors and Heirs-as-Law of Peter Boyle, Deceased; also Teresa Snyder, James D. Snyder, Eugene Snyder, Fred. Snyder, and Casper Snyder, Heirs-at-Law of Joseph E. Snyder, Deceased, the Last Two Defendants Being Minors, Respondents.

To the honorable the judge of the circuit court of the United States for the eighth (8th) circuit within and for the district of Kansas:

Nicholas McAlpine, James M. Mason, and Sophia A. Cobb, of the State of Kansas, bring their bill of complaint against George W. Tourtelott, George P. Allcutt, Lafayette Traber, Joseph L. Norman, C. F. Welland, all said parties named Boyle, and all said parties named Snyder, who are all citizens of the State of Missouri except Teresa Snyder, who claims to reside in the State of Kansas.

And thereupon your orator- complains and says they are the lawful owners of the lands described as follows, to wit:

All that part of the certain piece of land marked Jos. E. Snyder on the plat of Kansas City, Kansas, No. 9, at the office of the register of deeds in Wyandotte county, Kansas, which lies southwesterly of a line drawn parallel to and 54 feet north sixty-one and one-half (61½) degrees east from the easterly line of Wood street extended through said tract, more particularly described as—

Commencing six hundred and forty and two-twelfths (640$\frac{2}{12}$) feet south sixty-one and one-half (61½) degrees west from another point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of fractional section eleven (11), township eleven (11) south, in range twenty-five (25) east, of said county, said last-mentioned point being on the State line between the States of Kansas and Missouri; thence south sixty-one and one-half (61½) degrees west three hundred and forty (340) feet; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east three hundred and forty (340) feet; thence north twenty-eight and one-half (28½) degrees west three hundred (300) feet to the place of beginning, containing two and one third (2⅓) acres of land, more or less.

That the lands above mentioned, with other lands, were patented to one Silas Armstrong by the United States Government in the year 1857, and said patent included all the lands now the present site of Kansas City, Kansas, and bounded on the north by the Missouri and Kansas rivers, on the east by the State line between the States of Kansas and Missouri, on the south by the old bed of Tur-

key creek and the Kansas river, and on the west by the Kansas river.

That afterwards, in July, 1859, said Armstrong and his wife sold and conveyed to one David E. James a certain undivided interest of ninety (90) acres in all that part or parcel of land last above described, known as that part of Armstrong's reserve No. 1, lying north of the old bed of Turkey creek, containing at that time about two hundred and forty (240) acres, more or less.

That afterwards, in the year 1860, said David E. James
426 made a title to one James Gladden for a certain undivided ten (10) acres out of the said undivided interest of ninety (90) acres and delivered the same to Gladden, and said Gladden immediately transferred, for a valuable consideration by one Jos. E. Snyder paid, on or about the 6th day of March, 1860, — assigned said title bond to Henry R. Seegar at the request of and for and in trust for the said Joseph E. Snyder, hereinafter mentioned.

And the sole and only consideration or such assignment was paid by said Joseph E. Snyder, and by said transaction said Henry R. Seegar became the trustee, holding such interests in said land mentioned in said title bond solely for the use and benefit of said Joseph E. Snyder.

That thereby on said 6th day of March, 1860, said Joseph E. Snyder became entitled to a conveyance from said David E. James of said ten (10) acres of said land so as aforesaid conveyed by said Armstrong to said David E. James and said Joseph E. Snyder was the equitable owner thereof.

That afterwards, on the 27th day of July, 1864, said David E. James made and delivered to said Joseph E. Snyder a carte-blanche quitclaim deed, dated as last above, but which was left blank as to the name of grantee and blank as to the description of the property to be conveyed therein, which said carte-blanche deed was when given wholly void for the purpose—title to any specific tract of land, it being at the time given by said James to said Snyder to temporarily appease the said Joseph E. Snyder, and, further, as evidence that said Snyder had had an interest in said lands to be thereafter located upon the consent of all the parties, when the rights of said David E. James coulf be partitioned in said lands, said two hundred and forty (240) acres, between him and other owners in common therein.

That afterwards, on the 15th day of October, 1867, under proceedings in partition No. 911 on the docket for the district court in and for Wyandotte county, Kansas, in a suit wherein Thomas Ewing, Jr., *et al.* were plaintiffs and William Weer, David E. James, *et al.* were defendants, the said court duly assigned and set off to said David E. James allotment No. 15 of the plat filed with the report of the commissioners in said partition suit, described as follows, viz:

Commencing at a point north twenty-eight and one-half (28½) degrees west two thousand five hundred and seventeen and three-fourths (2,517¾) feet from the southeast corner of section number eleven (11), township eleven (11) south, range twenty-five (25) east,

in Wyandotte county, Kansas, thence south sixty-one and one-half (61½) degrees west seventeen hundred and seventeen (1,717) feet to the east bank of the Kansas river; thence down the same north forty-two and three-fourths (42¾) degrees west two hundred and eighty-two (282) feet; thence north twenty-six and three-fourths (26¾) degrees west six hundred (600) feet; thence north nine and three-fourths (9¾) degrees west one hundred and nine (109) feet; thence north thirteen and one-half (13½) degrees east eighty-six (86) feet, and thence north thirty-one and one-fourth (31¼) degrees east ninety-one (91) feet; thence north sixty-one and one-half (61½) degrees east fifteen hundred and twenty-seven (1,527) feet to the west bank of the Missouri river; down the same south twenty-seven and three-fourths (27¾) degrees east three hundred and ninety-three and one-half (393½) feet; thence south forty-three and one-half (43½) degrees east four hundred and thirty-five (435) feet; thence south forty-six and one-fourth (46¼) degrees east two hundred eighty-seven (87) feet; thence south sixty-one and one-half (61½) degrees west four hundred and twenty-five (425) feet to the beginning, containing forty-three and fifty-three hundredths (43.53) acres, and upon which are located the lands in controversy.

Said allotment number fifteen (15) was duly set off and assigned to said David E. James by said court as a portion of his said
427 interest in said lands, and all the various interests of the claimants who were joined as parties in said suit were duly settled and adjudicated by said court.

The respective rights of said Joseph E. Snyder and David E. James, being left to agreement between them, *was* not passed upon by said court, and the rights of Snyder were included in the assignments to said David E. James, between whom and said Snyder no partition was then made.

That afterwards and on the 2nd day of December, 1867, said Joseph E. Snyder filed his voluntary petition in bankruptcy in the district court of the United States for the western district of Missouri, and on the 24th day of December, 1867, was duly adjudged a bankrupt by said court within the meaning and intent of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867.

That under said proceedings all the titles, legal and equitable, of said debtor, Joseph E. Snyder, to property, real and personal, were duly conveyed under the order of the court to his duly appointed assignee in bankruptcy.

That in said proceedings said Joseph E. Snyder, bankrupt, concealed from the said bankruptcy court, from the assignee in bankruptcy, and from all his creditors all knowledge of his equities in any lands in said reserve under said title bond and carte-blanche deed aforesaid, and in his inventory filed with his said petition falsely and fraudulently made oath that he had no assets except his tools in trade and certain exempt personal property; to all of which fraud and concealment the said Henry R. Seegar was a silent witness and well knowing at the time thereof all of the matters and

things herein stated and contained concerning said title and concealment of assets.

That afterwards, August 24th, 1868, while said Joseph E. Snyder was so holding his evidence of title so concealed, the said title bond made for his benefit in the name of said Henry R. Seegar, and said carte-blanche deed unfilled and unrecorded, said David E. James and Jennie M. James, his wife, bargained and sold to one James F. Joy, of the Hannibal and St. Joseph Railroad Company, the following-described lands out of his said allotment No. 15, viz:

Beginning at a point on the bank of the Missouri river north fifty (50) degrees and twenty-five (25) minutes west four hundred and thirteen and one-half (413½) feet, north fifty-nine (59) degrees twenty-five (25) minutes west three hundred and eighty and one-half (380½) feet, and north sixty-two (62) degrees and twenty-five (25) minutes west four hundred and ninety-eight and five-tenths (498.5) feet from a point on the State line between Missouri and Kansas fifteen hundred and eighty-two and one-fourth (1,582¼) feet from the southeast corner of section eleven (11), township eleven (11) south, range twenty-five (25) east, in Wyandotte county, Kansas, thence south sixty-one and one-half (61½) degrees west four hundred and seventy-nine and seventy-one hundredths (479.71) feet; thence north twenty-eight and one-half (28½) degre-s west ten hundred and eighty-six and one-half (1,086½) feet; thence north sixty-one and one-half (61½) degrees east three hundred and fifty-eight (358) feet to the bank of the Missouri river; thence south twenty-three (23) degrees thirty-two (32) minutes east three hundred and forty-five and thirty-four hundredths (345.34) feet; thence south twenty-seven (27) degrees eleven (11) minutes east two hundred and seventy-nine and one fourth (279¼) feet; thence south forty (40) degrees and forty-five (45) minutes east four hundred and seventy-six and five-tenths (476.5) feet to the beginning, containing ten (10) acres, being part of said allotment No. 15 of said partition case No. 911 above mentioned, and included all of the river frontage lands fronting on the Missouri river in said allotment, which is more particularly described and explained by reference to the plat No. 9, which
428 is on file at the office of the register of deeds in Wyandotte county, Kansas, and designated on said plat as lands sold to James F. Joy; that a deed of conveyance to said sale was made by said James and wife and placed in escrow in the 1st National Bank of Kansas City, Missouri.

The consideration expressed in said deed being one thousand dollars ($1,000), but the real consideration to be paid by said grantee was the riprapping of the river bank along the said Missouri river frontage to stop the washing which was then going on and threatening to involve all the land in said allotment No. 15 and other lands.

That immediately thereupon the said James F. Joy and the Hannibal and St. Joseph Railroad Company, for whose benefit he was acting, commenced the work on said riprapping and performed the same during the following fall and winter and completed the same in the spring of 1869, when the deed was duly delivered for said purchase to the said grantee therein named and recorded on

the 20th day of March, 1869, in the office of the register of deeds of Wyandotte county, Kansas, Liber L, page 542.

That after said James F. Joy and said railroad company had gone into the possession and occupation of said lands under said bargain and sale, and had purchased and contracted for material and labor, and had fully entered upon the performance of the covenants of said grantee as the consideration for said purchase and thereby had involved said grantee and beneficiary, the Hannibal and St. Joseph Railroad Company, in expenses, outlays, and obligations equivalent in extent to a full performance of said covenants and the full payment of said consideration, said Joseph E. Snyder, bankrupt, on the 25th day of September, 1868, procured his discharge under said proceedings in bankruptcy upon the false and fraudulent representations and statements aforesaid, and afterwards, on or about the 23rd day of October, in the absence of said D. E. James and Jennie M. James, whose names are appended to said carte-blanche deed above mentioned, he, said Snyder, at the time having full notice that said D. E. James and wife had disposed of said river frontage lands to said James F. Joy aforesaid and against the express wishes and without the knowledge and without the consent of said David E. James and Jennie M. James, his wife, unlawfully and without any authority therefor, filled into said carte-blanche deed his own name of Joseph E. Snyder as grantee, and also filled into said carte-blanche deed by writing therein a description of six (6) acres of land, more or less, in words and figures as follows, to wit:

Commencing at a point north twenty-eight and one-half (28½) degrees west thisty-six hundred and four and one-half (3,604½) feet from the southeast corner of section (11), township eleven (11), range twenty-five (25), in the county of Wyandotte and State of Kansas, thence south sixty-one and one-half (61½) degrees west six hundred and forty (640) feet and two (2) inches; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east eight hundred and seventy-one (871) feet and two (2) inches; thence along the southwest bank of the Missouri river north twenty-eight and one-half (28½) degrees west three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the place of beginning, containing six (6) acres, and afterwards placed the same on record in said office of the register of deeds in said county on the 23rd day of October, 1868, in Liber L, page 135.

That in making said attempted location of said six (6) acres of land as last aforesaid said Snyder not only acted without authority from the said grantors, but in locating said six (6) acres himself made a mistake so far as accurate description is concerned, and described in said deed six (6) acres of land the easterly two (2)
429 acres of which *was* at the time the deed was so filed out *in* as aforesaid in the main channel of the Missouri river, and which two acres had been washed away by the current of said river

since 1864 and between the date of said deed, 1864, and the filling in, in 1868.

Said Snyder at the time of filing said deed, in 1868, intended and fully supposed that he was filling into said deed a six (6) acres of said land fronting on the then bank of said river and running back south sixty-one and one-half (61½) degrees west from said river bank eight hundred and seventy-one (871) feet and two (2) inches.

And the error made by him at the time arose from his ignorance of the proper angle to be taken from the southeast corner of section number eleven (11), township eleven (11), range twenty-five (25) aforesaid, as his initial point, and, being ignorant of the washings of the banks of said river since 1864 and to 1868, he very naturally, supposing that the bank of the river was in 1868 where it had been in 1864, took the angle from the old partition plat of 1867, which was north twenty-eight and one-half (28½) degrees west, and thereby committed an error, a point north twenty-eight and one-half (28½) degrees west from the said section corner being in 1868 about three hundred (300) feet from the bank of said river and in the center of the main channel of said river.

That in making said description alike he, said Snyder, simply borrowed in part from the old lines of allotment as expressed in the partition plat and partition suit 911 above mentioned. Said Snyder disregarded the fact of the washing away of the two acres of land in the four years since 1864; that said Snyder at the time he filled up said deed, in 1868, fully intended and supposed he was locating to himself six (6) acres of land then in existence and running back eight hundred and seventy-one (871) feet and two (2) inches as aforesaid and including the lands in controversy in this suit 1st above described.

That afterwards said David E. James and wife, who had been absent in the State of Michigan at the time of the above unauthorized acts of said Snyder, returned and disaffirmed the said acts of said Snyder in attempting to locate to himself lands which he, James, had previously disposed of to said Joy and, in view of the complications that might arise on account thereof and in justice to all parties, required said Snyder to undo what he had done in his absence, and an agreement was thereupon effected between said Snyder and said James and wife whereby said Snyder and Teresa, his wife, made a conveyance back to said James under the same language of description by which he, Snyder, had so attempted to locate to himself lands, with the exception that the deed back to James was dated in 1869, subsequent to the washing away of the two acres aforesaid, and would by proper construction embrace the very lands in controversy in this suit first above described; and under the same agreement and as a part thereof Snyder was to cause said Henry R. Seegar to satisfy the aforesaid title bond for said ten (10) acres of land belonging to said Snyder on the records of said county, which was accordingly done and said agreement carried into effect, and thereupon and in consideration of such satisfaction, said title bond and the cleaning up of the records so as to relieve the complications

between said David E. James and said James F. Joy above referred to—

Said David E. James and wife then, in consideration of the premises and for no other consideration, granted to said Joseph E. Snyder four (4) acres of land, including within its boundaries the lands in controversy mentioned in this petition, which said (4) acres were granted to said Snyder in full and final settlement of all rights said Snyder had theretofore held in said reserve under and by virtue of said title bond of 1860.

That the satisfaction of said title bond as it appears on the
430 records refers to the deed of 1864—that is to say, the carte-blanche pretended deed, bearing date of 1864 and filled in in 1868 as aforesaid and the nominal consideration of one dollar ($1.00) as the consideration of such satisfaction.

But the substance of the transaction and the real consideration of the satisfaction of the title bond aforesaid at the time was the partitioning then to said Snyder of all his interests in said lands growing out of and arising in any way, in law or in equity, from all instruments which he then held under his said title bond of 1860, as modified by verbal agreements and by said carte-blanche deed, all of which, and without any new consideration entering therein as a factor, took its rise from, grew out of, and wholly originated from said title bond of 1860.

That while said David E. James in the above transactions repudiated the mistakes made in the attempted location of said Snyder and repudiated the same in so far as such attempted location of Snyder created any complication between said James and Joy and *y*ompany, yet in effect he suffered said location, so far as results were concerned, to be treated as valid as to the westerly two (2) acres of said six (6) acres and by the instruments which at that time passed between the parties as a part of the same transaction. *In* substantial effect resulted in allotting and conceding to said Joseph E. Snyder of his said land, as he, said Snyder, had supposed he had located it under his attempted location of 1868, but which he, said Snyder, had supposed he had located it under his said attempted location of 1868, but which said Snyder had failed to make effective and legal upon the records of Wyandotte county by reason of the said mistake of said Snyder above set forth, except that said Snyder under said new arrangement was required to yield up all the lands theretofore bargained to said Joy, which formed a part of said Snyder's intended description, and required said Snyder to relieve said Joy complication, and said Snyder there in final settlement received four (4) acres to the westward of said Joy lands, and thereby agreeing to receive in full and final settlement of all his interests in said title bond and in exchange for his supposed interests in the said six (6) acres a clear title to four (4) acres of land in view of his share of lands to be contributed for the purpose of riprapping and losses occasioned by the washing away of the bank of said Missouri river.

That afterwards, on the — day of May, 1869, said David E. James and wife filed in the office of the register of deeds of said county their plat laying out the city of Kansas City, Kansas, being plat

number 9 of said records, of which said four (4) acres of land *is* platted out and marked to the name of Joseph E. Snyder.

That the conveyance by which said Joseph E. Snyder and wife conveyed back to said James the attempted locations by said Snyder in said James' absence was dated on the 12th day of April and was for the expressed consideration of one dollar; and, at the same time that said James received said deed from said Snyder and wife, delivered to said Snyder a warranty deed for conveyance from himself and wife to said Snyder, dated April 13th, 1869, for the expressed consideration of one dollar, and immediately thereupon, at the request and as part of the same transaction, said Snyder caused said Henry R. Seegar, before mentioned, to satisfy the said title bond of 1860 aforesaid, and in which satisfaction the same one dollar is mentioned as one of the considerations of said transaction.

That this last-mentioned deed from James and wife to Snyder, of date 1869, would somewhat inac-urately describe the lands as so platted to said Snyder in said plat No. 9, except that the description commenced at an initial point, to wit, the southwest corner of the lands of James F. Joy, as marked on said plat, which in one method of construction would locate said lands southerly of the lands
431 in controversy and not any part of the same; that, however *there* may be, the location of whatever right said Snyder had in reserve, dating from 1860, under said plat of said James and wife, was duly ratified and accepted and acted upon by the bankrupt court, the assignee in bankruptcy, said Snyder, and all his creditors, and such tract so platted to Snyder includes the lands in controversy first above described.

That whatever rights said Joseph E. Snyder acquired in and to said four (4) acres of land so platted to him in 1869 by virtue of the premises *was* wholly under his rights existing under said title bond of 1860 and such modifications thereto as had been made by agreement without any new considerations paid by said Snyder in any manner whatever.

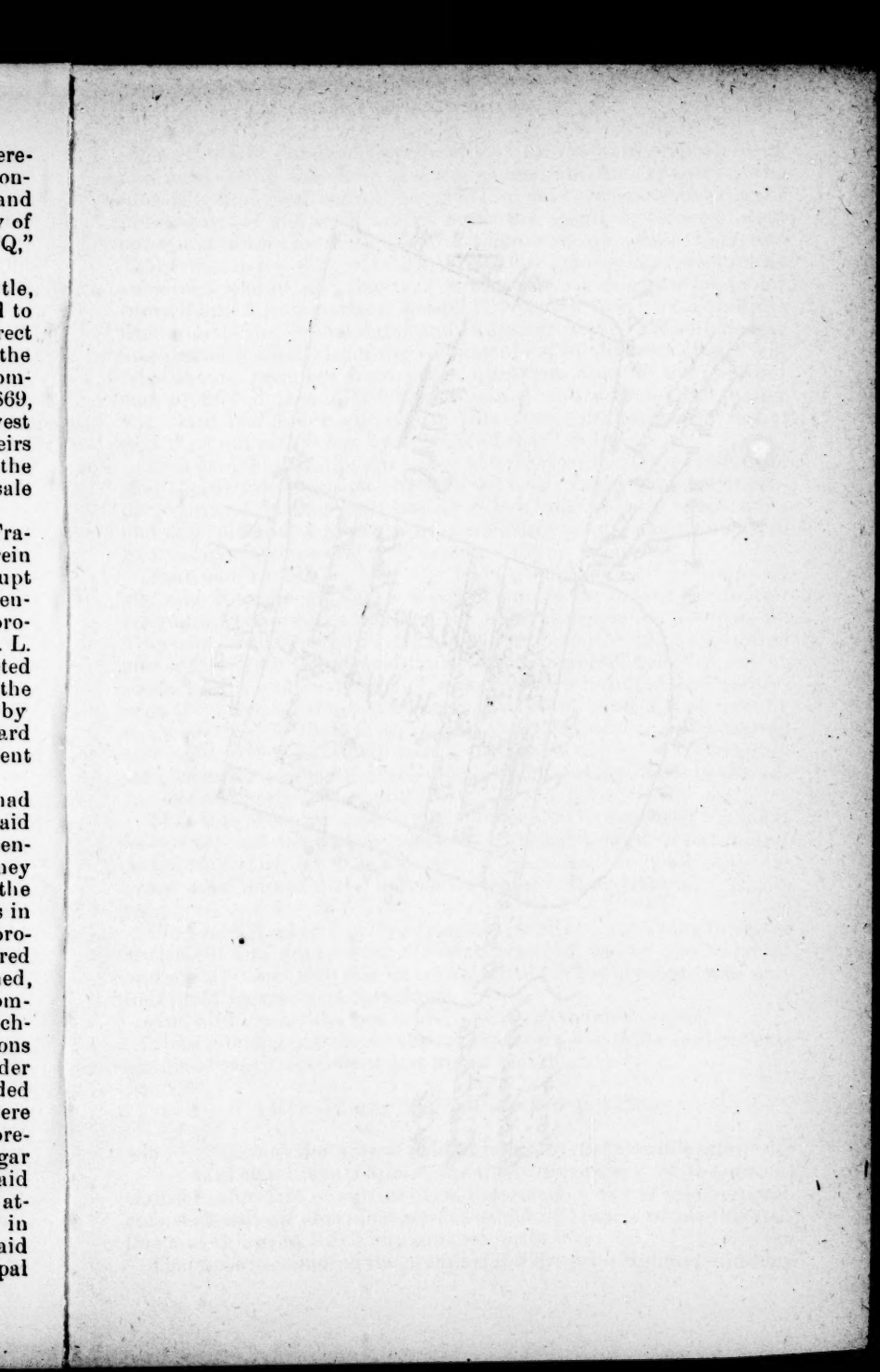
That afterwards, on or about the 16th day of June, 1871, the discharge in bankruptcy of said bankrupt Snyder was set aside by said bankrupt at the suit and upon the application of the respondents Joseph L. Norman and Lafayette Traber on the ground that said Snyder had illegally concealed his assets, and that the said bankrupt had property which had not been administered, and that the case thereupon was reinstated upon the docket of the said court as a case in bankruptcy, and afterwards, on the proceedings duly had, the lands described in complainants' complaint or bill, to wit, the lands 1st above described, the lands in controversy, with other lands, were duly declared, by a finding of said court, to belong to the estate of said bankrupt and were duly, under order of said court, scheduled and sold as the property of said bankrupt to satisfy the debts of said bankrupt, and one Byron Judd became the purchaser for the expressed consideration of five thousand one hundred and twenty ($5,120.00) dollars for the lands in controversy and other lands, in all about six (6) acres, which sale was duly approved and confirmed by the said court and a deed thereof ordered by the court

to be made to said purchaser, and such bankrupt deed was thereafter made in due form of law by the assignee in bankruptcy conveying said lands to Byron Judd, dated October 23rd, 1871, and recorded in the office of the register of deeds of said county of Wyandotte, Kansas, on the 27th day of October, 1871, Liber "Q," 189.

That said complainants, by a regular and recorded chain of title, hold all the rights, title, and interest of said Byron Judd in and to said lands, and in addition thereto, to further amend and correct their said title by reason of any defect or supposed defect in the chain of title from James to said Snyder and by reason of the commencement of the description of the said deed of April 13th, 1869, at the southwest corner of the Joy tract instead of the northwest corner of said tract, have procured from the widow and all the heirs of David E. James, deceased, a full and valid conveyance of the lands so purchased by said Judd as aforesaid at said bankrupt sale and now hold all the title to the same, legal and equitable.

Yet, notwithstanding all of the premises, the said Lafayette Traber and Joseph L. Norman, who are joined as respondents herein and who, in the year 1871, procured the discharge of said bankrupt Snyder to be set aside for the concealment of assets as before mentioned, and who, under the orders of the bankrupt court under proceedings instituted on their own petition or the petition of J. L. Norman, the partner and trustee therefor of said Traber, subjected all of the said lands of said Joseph E. Snyder, including this the lands in controversy, to the payment of a certain claim held by said Norman and Traber assigned to them by one Eugene Jaccard for the sum of over six thousand dollars ($6,000) to the payment of said claim.

Afterwards and thereafterward the said Traber and Norman had stood by and witnessed and consented to and induced these said proceedings, and after they had realized a large share of the said benefits of the said bankrupt sale and of the said purchase-money
432 which was paid in good faith by said Byron Judd as the purchaser at said sale, and after all the title to said lands in controversy had passed to said Byron Judd under and by their procurement, in strange disregard to the principles of equity procured by and upon their own solicitation two old, obsolete, abandoned, and limited claims against the said Joseph E. Snyder and for nominal considerations obtained control of the same and caused attachments to be issued, and on publications or pretended publications of service and without any proper service of the copy of the order of attachment upon the premises in controversy procured pretended judgements against said Snyder on *ex parte* proceedings which were void for want of jurisdiction and sold said lands under such pretended attachment proceedings and suits, and said Henry R. Seegar was the plaintiff in one of said pretended attachment suits and said C. F. Welland, defendant, was the plaintiff in the other of said attachment suits, and the judgements taken therein were grossly in excess of any amounts ever or at any time due or payable from said Snyder to them, and said Traber and Norman held the principal



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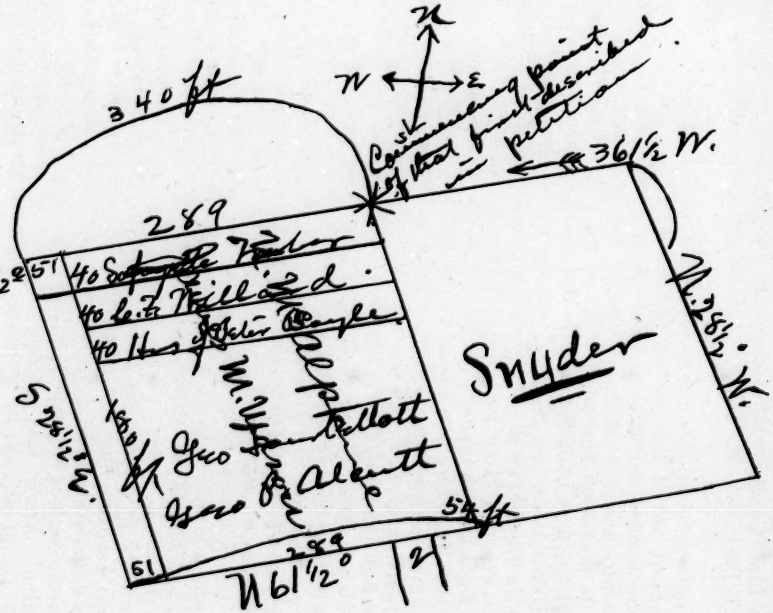

interest in said dubious claims and took all the risks of proceeding and prosecuting the same and the payment of the expenses of the said litigation, and agreed to give the said parties something or nothing out of the same according to the result or future of said enterprise, and eventually, in the same year, the said Lafayette Traber bid in the tract of said land 289 by 300 feet, as shown in the subjoined plat of said lands in controversy, in his own name for himself and for his partner, Joseph L. Norman, and took a sheriff's deed therefor in his own name and afterwards settled off with Seegar and discharged him from the enjoyments of the benefits of said enterprise and procured from him a quitclaim deed for the nominal sum of fifty dollars ($50.00), and settled and adjusted the matter with said Welland by giving to him forty (40) feet by 289 feet of said tract out of 300 feet by 289 feet of said lands.

That said Traber, the purchaser at said sheriff's sale, paid for the said sheriff's deed at said sheriff's sale only; said judgement rendered on said dubious and obsolete claims and the costs of said suits and said pretended attachment proceedings and judgements were had in the district court of Wyandotte county, Kansas.

That said Traber, holding the legal title thereto for himself and *and* said Norman and said Welland and to the extent hereinafter mentioned, afterwards sold to the said respondents, George W. Tourtelott and George P. Allcutt, the most southerly one hundred and eighty (180) feet of said lands in controversy, bounded on the south by the southerly line of said tract two hundred and eighty-nine (289) feet, on the east by the easterly line thereof, and west by the westerly line thereof, and north by a line drawn one hundred and eighty (180) feet north twenty-eight and one-half (28½) degrees west from the north line of the alley in Kansas City, Kansas, bounding the southerly line of said tract.

That said Trauber conveyed to Peter Boyle, deceased, the next forty (40) feet by two hundred and eighty-nine (289) feet, being forty (40) feet in width north twenty-eight and one-half (28½) degrees west immediately northerly of said Tourtelott and Alcutt tract.

That said Traber conveyed to said Welland pursuant to above settlement and adjustment the next forty (40) feet by two hundred and eighty-nine (289) feet immediately north twenty-eight and one-half (28½) degrees west therefrom.

And still claims the rest of the said tract as unconveyed.

The following plat shows the relative positions of the said several claims of said respondents last above mentioned:

(Here follows diagram marked p. 432*a*.)

433 That at the time of said purchase at said sheriff's sale under said attachments and at the times respectively of the several transfers aforesaid of parties of said claims to every of said respondents each and all of said respondents had full notice of all the matters and things in this complaint set forth.

That notwithstanding the premises and the prior rights of said com-

plainants in and to said land the said respondents have for the last five (5) years falsely and fraudulently set up and pretended to have a title to the said lands of the tracts claimed by each respectively and have brought and are bringing various annoying and vexatious suits against the complainants in ejectment and other litigations is threatened by the respondents and its pendency in the court is imminent.

That the specific tract of land claimed by said Traber and others belonging and holding under him, as laid off by said Traber at said sheriff's sale, was described in said sale as follows:

Commencing at a point six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet south sixty-one and one-half ($61\frac{1}{2}$) degrees west from another point north twenty-eight and one-half ($28\frac{1}{2}$) degrees west thirty-six hundred and four and one-half ($3{,}604\frac{1}{2}$) feet from the southeast corner of section eleven (11), township eleven (11) south, of range twenty-five (25) east, in said county, said last-mentioned point being on the State line between the States of Kansas and Missouri; thence south sixty-one and one-half ($61\frac{1}{2}$) degrees west two hundred and eighty-nine (289) feet; thence south twenty-eight and one-half ($28\frac{1}{2}$) degrees east three hundred (300) feet; thence north sixty-one and one-half ($61\frac{1}{2}$) degrees east two hundred and eighty-nine (289) feet; thence north twenty-eight and one-half ($28\frac{1}{2}$) degrees west three hundred (300) feet to the beginning, containing two (2) acres, more or less; that said tract has since been subdivided by said Traber, as shown from the above plat.

And the pretended claim of said Traber, Snyder, and other parties respondents named Snyder extends over and upon all the whole of said land 340 by 300 feet, being the tract first above described, and has originated since the commencement of the litigation between the plaintiffs and the said Traber parties.

That the said bankrupt, Joseph E. Snyder, whose lands were subjected to his bankrupt creditors under said bankrupt sale, quietly acquiesced in and participated — the said sale to be effected, and, although a party to the whole proceedings of such sale and its subsequent confirmation and the said possession thereafter taken thereunder, in no manner or form ever raised the objection in said court that the said property was not bankrupt assets, and said Snyder remained until the year 1868, when he departed this life, and the defendants herein mentioned named Snyder, claiming to be his heirs and representatives, have lived in the city of Kansas and in the vicinity of the lands, by themselves and their said ancestor, for more than thirteen (13) years, and stood by and permitted and allowed these lands to be sold by the said Byron Judd, the said bankrupt purchaser, to the grantees of these plaintiffs for a *bona fide* and adequate consideration, in good faith, and allowed the improvements to be placed upon said property and allowed the rights of the plaintiffs to become vested without ever at any time raising any objection to the same.

That on the 27th day of September, 1883, the defendants named Snyder, above mentioned, without the consent of the plaintiffs or either of them and in a stealthy and surreptitious manner, entered

upon a part of the land, to wit, upon a piece of said ground about fourteen by sixteen (14 x 16) feet in rectangular extent and situate about sixty-three (63) feet north twenty-eight and one-half (28½) degrees west from the southern boundary line of said larger tract first above described, and the easterly fence of said tract being
434 about fifty-four (54) feet south sixty-one and one-half (61½) degrees west of the westerly side of Wood street extended, and erected a house on said ground, and said defendant, Teresa Snyder, went into the same and unlawfully and illegally detained and still detains the same, and has set up an illegal and unjust claim to said lands.

And said defendants named Snyder were at the time the original injunction in this cause was issued and now are about to extend their possessions beyond the limits of the said tract now occupied by said house so by them erected, and are about to fence into an enclosure other grounds adjacent to said house and said tract, fourteen by sixteen (14 x 16) feet, and, by forcibly and fraudulently ejecting the plaintiffs from same, take the actual possession of the said ground, were it not for the restraining power of the injunction granted herein, all of which property so about to be taken possession of by the said Snyder defendants was at the time of the issuance of the original order of injunction herein and still is in the actual possession of the plaintiffs and is part and parcel of the said larger tract above described.

The defendants named Snyder at the time of the issuance of the original injunction herein threatened to and were about to seize upon the possession of the whole of said lands, and in the absence of the tenants of the plaintiffs, who are mostly working men and laborers and frequently have to seek work away from home, and still threaten and will seize upon and take possession of all and each of said tenancies and of the whole of said tract whenever an opportunity offers, and there is imminent danger that they will interfere with the fences, buildings, and other erections of the plaintiffs and their tenants located or hereinafter to be located thereon, and the said defendants named Snyder intend to seize upon all such lands and tenements for the purpose of collecting the rents and profits of the same, amounting to the monthly sum of twenty dollars ($20) per month, and for the purpose of making possession a foundation of an adverse claim to said land.

That such trespasses and wrongs will be attended with irreparable injuries to the plaintiffs, and a multiplicity of suits and a long course of vexatious litigations will result and ensue from and as a consequence of said trespasses and wrongs by the tenants of plaintiffs, who will be ousted of their possession if their unlawful acts are not restrained.

That the plaintiffs are remedieless at law and will be put to great expense and trouble for which the law grants no adequate relief.

That said defendants and each of them are wholly insolvent and no damages or costs could be recovered against them on execution in case these trespasses and wrongs are allowed to continue and are unrestrained by the said injunction.

That the injuries that will arise out of the said acts of trespass

as consequences of such acts are of such a nature that they will be constantly recurring and will be repeatedly interrupted and the seizn and possession of the plaintiffs and the damages therefor cannot be estimated and the injuries will be irreparable, and the law, by reason of the above and the insolvency of the defendants, will not afford an adequate remedy.

That the value of the property so taken possession of by the said defendants Snyders is of the sum of six hundred dollars ($600) and the value of the property about to be seized as aforesaid and of which the defendants Snyder are about to sequester the rents is the sum of ten thousand dollars ($10,000) and the full rental value is about five hundred dollars ($500) per annum, although at present it is paying but twenty dollars ($20.00) per month in its present situation.

That all of the matter and things stated in this and the former petition to which this is amendatory in reference to said entry of said Snyder defendants and relative to said injunction against
435 them were true at the time of the issuance of the original order of injunction herein and ever since have been and still are true at this time.

That ever since the year 1871, when said Byron Judd became the purchaser of said lands at said bankrupt sale, said complainants, by themselves and their several grantors under whom they claim, have been in open, avowed, and notorious possession of and visible and actual possession of all of the said lands and in occupation of the same, with houses, fences, and enclosures, and now have and for the last several years have had ten (10) or more tenants occupying houses on said lands and paying rent to the plaintiffs, and other open and notorious acts of ownership under color of title of record at the office of the register of deeds of said county by a regular recorded chain of title connected and continuous from said bankrupt deed down to the complainants, except that since the spring of 1879 the respondent George W. Tourtelott has had or claimed to have possession of a house on the southeast corner of said tract of land and an inclosure fronting twenty-five (25) feet on said Wood street extended and running back north sixty-one and one-half (61½) degrees east fifty-four (54) feet.

That the questions presented this honorable court are as follows:

I. Whether or not the lands in controversy were properly the assets of the bankrupt, Snyder, at the time of said bankrupt sale in 1871?

II. Whether or not it is a matter of record that the above question is *res adjudicata* as to such assets and whether or not an estoppel of record does not exist preventing collateral attack of the complainants' title by said respondents?

III. Whether or not the said respondents are not each, every, and all of them estopped from setting up their pretended claims under said attachment deeds by reason of the part taken by them in the previous subjection of said assets to the payment of said Jaccard claims under such proceedings in bankruptcy?

Whether, without regard to the merits of the prior title of said

complainants, the pretended title of said respondents under said Traber's sheriff deed under which they seek to deprive complainants of their prior possession is not void or voidable on account of its own inherent defects on account of a want of jurisdiction in said attachment suits, and whether — the parties named Snyder have not been guilty of such laches they ought now to be forever barred and estopped from setting up any claim to said lands?

That the determination of the above questions involves the construction of an act of Congress of the United States, to wit, the interpretation and construction of the said act of bankruptcy.

And also involves the interpretation of a title to the complainants under the various suits and litigations brought and threatened as aforesaid — are an attack upon the prior jurisdiction of the United States in bankruptcy and upon the vested rights of the complainants under said jurisdiction.

That the vexations and annoyances of litigation brought by the said respondents, now pending in this court, consists of the suit of said Tourtelott and Alcutt *vs.* the complainants, and other suits by each and other claimants will shortly be pending in this court, and such pendency of suits in this court is imminent and threatened by the said respondents.

That under said suit of Tourtelott and Allcutt *vs.* the complainants said Tourtelott and Allcutt seek to recover the southerly 180 feet out of the 300 feet, as represented in the accompanying
436 plat, in a suit brought in the nature of an ejectment on the law side of the court, and all the other said threatened suits, and the pendency of which suits are imminent in this court, are of the same nature on the law side of the court and concern the respective parcels of land claimed by each of the claimants above referred to, as shown upon said plat; all of which suits involve a determination of the above said several questions concerning parcels of the same, said subject-matter of this controversy, and involves a production in each and every of said causes of the same line of proof and evidence for both plaintiffs and defendants.

To the end, therefore, that all these several suits and vexations may be determined and the title to all of said lands in controversy may be settled and quieted by one general suit against all of the said claimants holding adverse claims to said complainants by the same kind, quality, and manner of title and from the same source complainants bring this their suit.

That the litigation above mentioned by said Tourtelott and Alcutt heretofore has put complainants to great expense and trouble and to upwards of one thousand dollars ($1,000.00) cash outlay, and the new and threatened suits by other parties will involve an expenditure of more than the entire value of the subject-matter of the litigation if continued and persisted in, which said respondents threaten and are about to do, as complainants are informed by them respondents.

That the entire value of said subject-matter of said litigation is ten thousand dollars ($10,000.00).

That by reason of the premises the said complainants are wholly

remedialess at law to prevent their said property from being consumed and eaten up by useless and unjust litigation.

And therefore prays that the court settle and determine each and every of the said questions set forth, and that pending the proceedings of the court to so determine and settle the same respondents herein be enjoined from the further prosecution of any and all suits complained of until such matters above mentioned be decided and adjudicated in this court in this suit, and that the said suit of Tourtelott and Alcutt *vs.* these complainants and all suits hereafter brought or removed to this court from any other court or jurisdiction be stayed and suspended until all the questions concerning the same matters be adjudicated in this suit.

And that upon a final hearing and decree in favor of complainants this injunction be made perpetual.

And your orators pray that they may have such other and further relief as the nature of the case may require and to your honor may seem meet.

May it please your honor to grant unto your orators not only the suit of injunction confirmable to the prayer of this bill, but also a writ of subpœna directed to said George W. Tourtelott, George P. Allcutt, Lafayette Traber, Joseph L. Norman, C. F. Welland, Frank Boyle, and Mary Boyle, Alexander Boyle, Jessie Boyle, and Daisy Boyle, the last three named being minors—

Commanding them on a certain day therein named to be and appear in this honorable court, then and there to answer the premises and to stand to, perform, and abide such further order, direction, and decree as may be made against them or either of them.

And your orator, is in duty bound, will ever pray.

JAMES M. MASON,
Solicitor for and Counsel for Complainants.

437 UNITED STATES OF AMERICA, }
District of Kansas, } *ss:*

At Wyandotte, at my office, in the county of Wyandotte and district aforesaid, on the — day of June, A. D. 1884, personally appeared the above-named Nicholas McAlpine and James M. Mason, complainants, who, being first duly sworn according to law, deposeth and say that they are the complainants in the foregoing bill and have read the same and know the contents thereof; that the said bill is true of their own knowledge except as to the matters which are therein stated on information and belief of the complainant-, and as to those matters they believe them to be true.

JAMES M. MASON.
N. McALPINE.

Given under my hand this 2nd day of June, 1884.
Commission expires April 5th, 1887.

JOHN S. COX, [SEAL.]
Notary Public.

Endorsed: Nicholas McAlpine and James M. Mason against Teresa Snyder *et al.* Original bill in equity. Filed June 3rd, 1884. A. S. Thomas, clerk. J. M. Mason, solicitor for plaintiffs.

Defendants next read and offered in evidence the separate answer of George W. Tourtelott and George P. Allcutt to said bill of complaint in words and figures following, to wit:

438 In the Circuit Court of the United States for the District of Kansas.

NICHOLAS MCALPINE, JAMES M. MASON, and SOPHIA COBB, Complainants,
vs.
GEORGE W. TOURTELOTT and GEORGE P. ALLCUTT and Others, Defendants.
} In Equity.

The separate answer of George W. Tourtelott and George P. Allcutt to the bill of complaint exhibited herein against them and others. Filed June 3rd, 1884.

Said Tourtelott and Allcutt, saving the benefit of all exceptions to said bill of complaint, for answer to so much thereof as may be they are advised it is material for them to answer, say:

These defendants on March 10th, 1879, got a conveyance in fee simple absolute to a part of the lands described in said bill of complaint, which part is situated in the county of Wyandotte, Kansas, and is thus bounded, to wit:

Beginning six hundred and forty (640) feet and two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point thirty-four hundred and eighty-four and one-half (3,484½) feet north twenty-eight and one-half (28½) degrees west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, and running thence from said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred and eighty (180) feet; thence north sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred and eighty (180) feet to the place of beginning, being the same lands conveyed to said defendants by Lafayette Traber and wife and Joseph L. Norman and wife by deed dated March 10th, 1879.

These defendants paid said Traber and Norman one thousand dollars ($1,000) for said land at the delivery of said deed, believing that they thereby acquired a perfect title to such land and without any notice of defect in the title thereto.

These defendants attach to their answer and make a part thereof a tracing showing the location of the land covered by said deed to them with reference to other parcels of land mentioned in said bill of complaint and hereafter in this answer.

On the — day of December, 1881, said Allcutt conveyed to said Tourtelott by deed of that date all the right, title, and interest and estate to and in said land so conveyed by said Traber and Norman, and ever since that — said Tourtelott has owned and now owns the same. These defendants do not nor does either of them pretend or have any right, title, or interest or estate to or in any other of the lands mentioned in said bill of complaint.

Said Tourtelott has a perfect record title to said land so conveyed by said Traber and Norman derived from the United States,
439 the chain of title thereto being as follows, to wit:

1. Patent, dated July 13th, 1857, from the United States to Silas Armstrong, conveying lot number 1 of fractional section ten (10), containing ninety-six (96) acres; lot number 1 of fractional section eleven (11), containing one hundred and eighty-one hundredths (1.81) acres; lot No. 1 of fractional section fourteen (14), containing seventy-seven (77) acres; the northeast fractional quarter of section fifteen (15), containing six and fifty-three hundredths (6.53) acres, and other lands in township eleven of *of* range twenty-five (25) of the sixth (6th) principal meridian.

2. Deed, dated July 15th, 1859, for the consideration of forty-five hundred dollars ($4,500), made by Silas Armstrong and wife to David E. James, conveying to said James the undivided three-eighths (3/8) of a tract lying north of the old bed of Turkey creek, bounded south by the same, east by the Missouri State line, north by the Missouri river, and west by the Kansas river, consisting of fractional sections ten (10), eleven (11), fourteen (14), and fifteen, said undivided three-eighths (3/8) containing about ninety (90) acres.

Various other undivided interests in said land so patented to Silas Armstrong were acquired from and under him by other parties.

3. In the partition suit number 911 of Thomas Ewing, Jr., and others against William Weer, David E. James, and others mentioned in said bill of complaint there was set off and assigned to said David E. James in severalty a tract containing forty-three and fifty-three hundredths (43.53) acres out of said land so patented to said Armstrong, which tract is marked allotment No. 15 on the plat with the report of the commissioners in partition. Said allotment No. 15 includes the land now owned by said Tourtelott and also all land covered by the two deeds from David E. James and wife to Joseph E. Snyder, hereinafter mentioned, and also by the deed from said David E. James and wife to James F. Joy, hereinafter mentioned. Said allotment No. 15 to said David E. James, made in said partition suit, is correctly described in said bill of complaint.

4. Warranty deed, dated April 13th, 1869, from David E. James and wife to Joseph E. Snyder, conveying land in Wyandotte county, Kansas, thus in said deed described, to wit:

"Variation eleven degrees (11) east, beginning at the southwest corner of a tract of land conveyed by said James to James F. Joy and now known as railroad land, said southwest corner being the northwest corner of a certain parcel of land now owned by said

James, thence running south sixty-one (61) degrees and fifty (50) minutes west five hundred and eighty and eight-tenths (580.8) feet; thence south twenty-eight (28) degrees ten (10) minutes east three hundred (300) feet; thence north sixty-one (61) degrees fifty (50) minutes east five hundred and eighty and eight-tenths (580.8) feet; thence north twenty-eight (28) degrees ten (10) minutes west three hundred (300) feet to the place of beginning, and to contain four (4) acres," said land being in township eleven (11), range twenty-five (25). The land conveyed to said James F. Joy, mentioned in said deed of April 13th, 1869, to Joseph E. Snyder, is the conveyance dated August 24th, 1868, by David E. James and wife to James F. Joy, mentioned in said bill of complaint, which copies the description of the land in said deed with substantial accuracy, there being, however, accompanying said deed a plat, which is part thereof, which makes the description of land thereby conveyed clear and removes all ambiguity therein.

440 5. Two sheriff's deeds to said Lafayette Traber for the consideration of ten hundred and two dollars ($1,002) by sheriffs of Wyandotte county, Kansas, one dated April 19th, 1875, and one dated March 8th, 1879, conveying land owned by said Joseph E. Snyder in said county thus described, to wit:

"Beginning at a point six hundred and forty (640) feet and two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-six hundred and four and one-half (3,604½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), in township number eleven, of range twenty-five (25), and running from said first-mentioned point south sixty-one (61) degrees and thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eight-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east three hundred (300) feet; thence north twenty-eight (28) degrees thirty (30) minutes west three hundred (300) feet to the beginning."

Said sheriff's deeds were made to convey said lands which had been sold by the sheriff of said Wyandotte county according to law under and by virtue of special executions on judgements in attachment suits against said Joseph E. Snyder, duly rendered by the district court of Wyandotte county, Kansas, in suits commenced in May, 1784, wherein said land so conveyed to said Traber had been duly seized and taken in attachment, one of said attachment suits being brought by C. F. Welland, who recovered therein judgement against said Snyder for three hundred and eighty-seven ($387.00) dollars and costs, and the other being brought by Henry R. Seegar, who recovered therein judgement for five hundred and fifteen dollars ($515.00) and costs of suit against said Snyder, said judgements being duly recovered, rendered, and given September 10th, 1874.

The land attached in each of said cases and sold and conveyed to said Traber was duly and regularly attached and ordered to be sold and sold on special execution in said attachment suits.

The above-mentioned deed from Traber and Norman to Tourte-

lott and Allcutt and that from Allcutt to Tourtelott bring the title to said land down to said Tourtelott.

Soon after said Tourtelott and Allcutt so acquired title to said land they took actual possession thereof under said title, and held the same for some months and until said McAlpine and Mason wrongfully entered onto a part of the land and took possession thereof. The part of said land so wrongfully entered upon was all of the tract except a parcel about twenty-five (25) feet by about fifty-four (54) feet in the most easterly corner of the tract, located in a rectangular shape and thus bounded: Beginning at said most easterly corner and running thence westerly along the southeasterly line of said tract to the prolongation northerly of Wood street, in Kansas City, Kansas, about fifty-four (54) feet, and thence along the northeasterly line of the land so conveyed by Traber and Norman twenty-five (25) feet, and thence northeasterly to the northeastern line of the land so conveyed, and thence twenty-five (25) feet to the point of beginning, being the land fenced in and occupied by Frank Rodie in October, 1879, as a tenant under said Allcutt and Tourtelott, and except also a part of said land conveyed to said Tourtelott and Allcutt, being a parcel fifty (50) feet square in the most southern corner of the tract so conveyed, bounded by the exterior line of the tracts on two sides and occupied and held in October, 1879, by Anton Hoenf as tenant under said Tourtelott and Allcutt.

Said McAlpine and Mason, after making such unlawful entry, put Charles Wilkins, John Spering, and William Willis on the land so entered upon as their agents, and soon thereafter and
441 on October 23rd, 1879, said Tourtelott and Allcutt commenced an action in ejectment in the district court in and for said county of Wyandotte against McAlpine, Mason, Wilkins, Spering, and Willis to recover from them the land so unlawfully entered upon and the possession thereof, with damages and the rents and profits thereof and cost of suit, being all of the land so conveyed to said Tourtelott and Allcutt except the part thereof so occupied by said Rodie and the part so occupied by said Hoenf.

Said suit in ejectment is still pending and undisposed of and the same having once been tried in said district court, which gave a judgement in favor of said Tourtelott and Allcutt, but such judgement was afterwards reversed in the supreme court of Kansas and the case remanded to said district court for further proceedings.

At the April term, 1884, of said district court the defendants in said suit in ejectment made application to remove the same, pursuant to the law of the United States, into this court, and the order for such removal was at said term duly made on proper application and bond being made for the purpose.

The parties removing such case should have filed the proper transcript in this court at its June term, 1884, *and* but failed to do so, and said Tourtelott and Allcutt intend to procure and file such transcript, so as to bring said suit in ejectment into this court for trial on its merits.

That defendants, therefore, insist that said McAlpine and Mason have a complete and adequate remedy at law for the enforcement of

all rights, if any they have, to said lands so conveyed by Traber and Norman to said Tourtelott and Allcutt, and that there is no equitable ground whatever for the resort to a court of chancery in the premises.

Those defendants deny that said complainants are lawful owners of said tract of land so conveyed by Traber and Norman — said Tourtelott and Allcutt or of any part thereof, and deny that said complainants or any of them have any legal or equitable right, title, interest, or estate in or to said land which is a part of the tract three hundred (300) feet by three hundred and forty (340) feet in said bill of complaint first described.

These defendants admit that said patent to Armstrong included said land and other land now the present site of Kansas City, Kansas, and bounded as in the bill stated. The conveyance in July, 1858, to David E. James by Armstrong and wife of a certain undivided interest of ninety (90) acres in the bill of complaint mentioned is the conveyance of July 15th, 1859, of three-eighths undivided from Silas Armstrong and wife to said James in this answer mentioned.

As to the title bond from David E. James to James Gladden and the assignment thereof by Gladden to Henry R. Seegar, mentioned in the bill of complaint, these defendants say—

That they have no personal knowledge thereof, but that they are informed and believe that said James made to said Gladden a bond to convey to him one undivided ten (10) acres within one year, and that said Gladden, for the consideration of one thousand dollars to him paid or caused to be paid by Henry R. Seegar, assigned said bond to said Segar, which bond, assignment, and acknowledgement therefor were recorded in the office of the register of deeds of Wyandotte county, Kansas, in Book A, page 462, on October 1st, 1860. Exhibit "A," hereto attached and made a part hereof of this answer, is a correct copy from such record of such bond, assignment, and acknowledgement.

In so far as the allegations in said bill as to and respecting the terms of said bond and the assignments differ from the copy thereof above referred to these defendants deny all and each of the same.

These defendants further say that they are informed and believe that when said assignment was made to said Seegar that said
442 Joseph E. Snyder was largely indebted and wholly insolvent, and that while it is true, as they believe from information and belief, that the consideration for said assignment by said Gladden to Seegar moved from said Joseph E. Snyder it is also true that he procured and caused such assignment to be made in fraud of the rights of his creditors and to prevent, hinder, and delay the same from collecting their just debts, and that there never was any writing whatever to manifest or show that said Seegar held such bond or any interest thereunder in trust for said Snyder.

These defendants are further informed and believe that when such assignment was made and delivered said Seegar had no knowledge thereof and did not learn of the existence of the same until long afterwards.

These defendants further state that they are advised by their counsel that under the circumstances said Snyder could not enforce against said Seegar any trust whatever respecting the land covered by said bond, and under the advice of their counsel they deny that said Joseph E. Snyder was by virtue of said bond and assignment entitled to a conveyance from said James of any land whatever, and also that he was the equitable owner of any land whatever.

As respects the deed dated July 27th, 1864, from David E. James and wife to Joseph E. Snyder for six (6) acres of land mentioned in the bill of complaint, these defendants say that said deed was duly recorded on October 23rd, 1868, in the office of the register of deeds of said Wyandotte county, in Book L, page 135. Exhibit B, hereto attached and made a part hereof for this answer, is a correct copy of such deed record.

The original of said deed is not in the possession nor under the control of these defendants or either of them, nor have they been able, though they have through their counsel sought therefor, to find the same. These defendants have no personal knowledge whatever as to how or when said deed was written, but state that from the record thereof the same appears to have been duly acknowledged by said David E. James and his wife August 2nd, 1864, and the deed appears fair and all right on such record.

These defendants have no information other than from the allegations of said bill and statements herein, having no further knowledge of the facts, as to whether when said deed was acknowledged and delivered any blank or blanks existed therein, and they therefore, having no belief or information sufficient to form a belief in the premises, deny that any such blank or blanks existed and ask that complainants be required to make strict proof that such deed was, as they allege in their bill of complaint, a carte-blanche quit-claim deed, and also that the same was left blank as to name of grantee and blank as to the description of the property to be conveyed, and also that the same was given to temporarily appease said Snyder.

That defendants admit the making of said partition in the suit of Thomas Ewing, Jr., and others against William Weer and others, and state that said Henry R. Seegar was a party defendant with said David E. James in said suit, but that said Joseph E. Snyder was not a party thereto; and they further state that in such suit it was found and adjudged that said David E. James was the owner of a certain undivided interest in the land sought to be partitioned and said tract allotment No. 15, mentioned in the bill of complaint, of forty-three and fifty-three hundredths (43.53) acres was assigned to him as a part of his share of said land.

These defendants admit that Joseph E. Snyder was adjudicated bankrupt on December 24th, 1867, by the district court of the United States for the western district of Missouri on his own petition, filed December 2nd, 1867.

The defendants further state that in such bankrupt proceedings Samuel A. Vose was duly appointed and qualified as assignee
443 of said Snyder on March 2nd, 1868, and on the same day the

proper register in bankruptcy made to said Vose the proper assignment of the effects of said Snyder; that in the course of said bankrupt proceedings a discharge was granted to said Snyder on September 25th, 1868, but such discharge was afterwards by said district court of the United States and in proceedings duly had for the purpose set aside and vacated and annulled, and said Snyder afterwards never had or received or obtained any discharge in bankruptcy, and he afterwards died in 1879.

These defendants admit that said Joseph E. Snyder did not in said bankrupt proceedings schedule or report as a part of his assets said bond from David E. James to Gladden, assigned to Seegar, or said deed dated July 27th, 1864, made to him by said James, nor any lands covered by either of said documents, but these defendants say that said Joseph E. Snyder always denied that he falsely or fraudulently concealed or omitted to schedule said documents or property covered thereby.

These defendants have no personal knowledge as to the said bankrupt proceedings, but rely upon the records of the court for information respecting the same.

Defendants further say that they have no personal knowledge nor information sufficient to form a belief as to whether or not said Seegar was, as alleged in bill of complaint, a silent witness or a witness at all to said Snyder's omission from or concealment of assets in said bankrupt proceedings or whether or not said Seegar knew of said alleged concealment, and ask that said complainants be required to make strict proof of the allegations in the bill in that regard.

These defendants admit that David E. James and his wife made to James F. Joy the conveyance for the ten (10) acres of land, a part of said allotment No. 15 in said partition suit mentioned in said bill of complaint, such deed being dated August 24th, 1868, and recorded in the office of the register of deeds of said Wyandotte county, in Book L, page 542, on March 20th, 1869.

These defendants have no personal information as to the making of such conveyance or the real consideration therefor, and ask that complainants be required to make strict proof of their allegations in said bill of complaint respecting the consideration of such conveyance.

These defendants deny that said Joseph E. Snyder ever unlawfully or without any authority filled up said deed of July 27th, 1864, with his own name as grantee or the description of the land as therein appeared by the records thereof, but say that from their information and all the circumstances which have come to their knowledge they believe that whatever said Joseph E. Snyder may have done in the matter of writing or filling up such conveyance of July 27th, 1864, from James and wife to Snyder was done legally and either under authority from James and wife when done or thereafter they ratified and approved the act of said Snyder, and as evidence thereof these defendants say that there now appears of record in the office of the register of deeds of Wyandotte county, in Book M, on page 207, a document purporting to be signed by said Henry

R. Seegar, dated April 28th, 1869, referred to in the bill as the release of the title bond, which document, except the signature of Henry R. Seegar, Joseph E. Snyder, and R. Sachs, was, as these defendants are informed and believe and charge the truth to be, written by said David E. James on said bond which he had given to said Gladden for ten (10) acres of land, and which document, including the signatures thereto, is of the following tenor, to wit:

STATE OF MISSOURI, } ss:
Jackson County, }

In consideration of one dollar to me in hand paid, and the absolute fulfillment of the within bond by conveyance of six (6) 444 acres of land to Joseph E. Snyder by deed dated July 27th, 1864, and recorded on the 23rd day of October, 1868, in Liber L of Deeds, on pages 135 and 136, in the office of the register of deeds in and for said county of Wyandotte, State of Kansas, this bond, recorded in said office, in Record "A," page 462, is hereby cancelled and discharged and absolutely fulfilled.

Kansas City, Missouri, April 28th, 1869.

HENRY R. SEEGAR.

Witnessed by—
JOSEPH E. SNYDER.
R. SACHS.

This document was recorded in said register's office on July 1st, 1869.

These defendants, further answering, deny that said Joseph E. Snyder in filling up such conveyance on July 27th, 1864, if he filled up the same as alleged in said bill of complaint, acted without authority from said James and wife, and also deny that he made any mistake whatever in the description of the land conveyed by such conveyance, and also deny that said Snyder intended or supposed that he was filling into said deed of July 27th, 1864, a six (6) acres of land fronting on the bank of said Missouri river as it was in 1868, or running back south sixty-one and one-half (61½) degrees west from said river bank eight hundred and seventy-one (871) feet and two (2) inches.

These defendants deny that there was any error or mistake whatever in the description of land covered by said conveyance of July 27th, 1864, or in the filling up of such conveyance, or that there was any ignorance whatever on the part of said Snyder of the proper angle to be taken from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), or that there was any ignorance whatever on the part of said Snyder of the washing of said bank of said Missouri river between 1864 and 1868.

That these defendants also deny that said Snyder ever supposed that the bank of said river was in 1868 where it had been in 1864.

These defendants deny that said Snyder or any party to said conveyance of July 27th, 1864, ever supposed that said land covered the land in controversy in this suit or any part thereof or intended

or proposed to make the same cover or include such land or any part thereof — intended or supposed that by such conveyance filled up as it appears by the record thereof to be there was located or conveyed to said Snyder six (6) acres of land running back eight hundred and seventy-one (871) feet and two (2) inches from the bank of said Missouri river as it was in 1868.

Said conveyance of July 27th, 1864, covered six (6) acres of land in existence when the conveyance was made and ever since and now, though a part thereof, about two (2) acres, was in 1868 and has been since in the Missouri river.

There was no error or mistake whatever in the filling up of the said conveyance of July 27th, 1864, or in the making thereof, but the same was at the time it was recorded in the precise form in which each and all the parties thereto intended and designed it to be, as these defendants verily believe.

These defendants deny that said David E. James and his wife ever disaffirmed any act of said Snyder in filling up said conveyance of July 27th, 1864, or in using such instrument to locate and convey to himself the land which the same purports to convey, but, on the contrary, they recognized and adopted such conveyance duly recorded as aforesaid and thereafter made an arrangement and agreement with said Snyder by which he was to convey back to said David E. James the land covered by such conveyance of July 27th, 1864, and by which said David E. James and his wife were to convey to said Joseph E. Snyder four (4) acres of land back from the Missouri river covering the land in controversy in this suit.

445 Said Joseph E. Snyder and wife made and delivered to said David E. James a warranty deed dated April 12, 1869, acknowledged April 14, 1869, and recorded in the office of the register of deeds, in Book M, page 208, on July 1, 1869, whereby said Snyder and wife conveyed to said James the six (6) acres of land conveyed by said deed of July 27th, 1864, from David E. James and wife to said Snyder.

David E. James and wife, by warranty deed dated April 13th, 1869, acknowledged by said David E. James the same day, and by his wife April 17th, 1869, recorded in the office of the register of deeds, in Book N, page 50, on February 5, 1870, conveyed to said Joseph E. Snyder four (4) acres of land. This last-mentioned conveyance is the same as referred to in setting out the title of said Tourtelott and Allcutt to the land in controversy in this suit in the first part of this answer.

Such conveyance covers about two (2) acres of land covered by said deed of July 27th, 1864, from James and wife to Snyder, and also about two (2) acres of land not covered by said last-mentioned conveyance, including the land in controversy in this case and that now owned by said Tourtelott, as hereinbefore stated.

Defendants deny that said deed of July 27th, 1864, from James and wife to Snyder, or said deed of April 12th, 1869, from Snyder and wife to James, by any proper construction or any construction whatever, embrace the lands in controversy in this suit or were intended to embrace the same, and they deny that it was a part of the

agreement between James and Snyder and to the making of the two conveyances dated in April, 1869, that said Snyder should procure said Seegar to satisfy said title bond for ten (10) acres of land given by James to Gladden, or that in consideration of the satisfaction said James and wife were to convey to said Snyder four (4) acres of land, or that said deed to said Snyder for four (4) acres of land was to be in full or final settlement of all rights that said Snyder had under or by virtue of said title bond of 1860.

These defendants deny that said conveyance to said Snyder of April 13th, 1869, was in any sense whatever in satisfaction of said title bond or in execution or in fulfillment thereof, or that it had any connection whatever with the performance of said bond or the release or satisfaction thereof.

These defendants deny that the real consideration of the satisfaction of said title bond for said ten (10) acres of land was the partition of said Snyder *of* said conveyance of April 13th, 1869, of all or any of his interests in land growing out of or arising in any way in law or equity from under instruments which he then held under his said title bond as modified by verbal agreements and by said alleged carte-blanche deed or without any new consideration entering therein as a factor took its rise from, grew out of, or in any way originated from said title bond.

These defendants deny that said David E. James, in procuring from said Seegar the before-mentioned satisfaction of said title bond and procuring from said Snyder said conveyance to himself of April 12th, 1869, of the six (6) acres of land or in giving said conveyance of April 13th, 1869, to said Snyder of the four (4) acres of land, repudiated any mistake made by said Snyder or repudiated anything whatever done or attempted to be done by said Snyder or intended or designed to do or accomplish anything whatever other than what appears on the face of the several documents or to correct any mistake whatever of said Snyder or to effectually *or* carry out any intention whatever of said Snyder which he had before that failed to carry out.

These defendants deny that said Joseph E. Snyder ever received or ever agreed to receive four (4) acres of land to the westward of said Joy land in full or final settlement of all his interest in said title bond, but say that the taking and making of such con-
446 veyance of four acres was entirely independent of and distinct from said title bond and the performance thereof and for new and distinct consideration.

These defendants deny that said satisfaction of said title bond by Henry R. Seegar was a part of the transaction including the making and delivery of said two conveyances for said six (6) acres and four (4) acres respectively in April, 1869, and deny that such satisfaction was for any consideration whatever other than that stated on the face thereof.

These defendants admit that David E. James and wife joined in making the plat of Kansas City, Kansas, mentioned in said bill of complaint and thereon marked off and designated as the four (4) acres of land conveyed by said James and wife to said Joseph E.

Snyder by said deed of April 13th, 1869, ma-king such land on such plat with the name of said Snyder to show *that* just what land they had intended to and did convey to said Snyder by said deed. Said Snyder did not acquire any right to such four (4) acres of land under said plat of Kansas City, Kansas, but such plat is evidence against said James and wife to show the construction of said four (4) acres deed to said Snyder.

On February 9th, 1870, said Joseph L. Norman, then the owner of a claim of three thousand and nine hundred and three ($3,903.70) dollars and seventy cents against said Joseph E. Snyder which he had purchased from E. Jaccard and Company, commenced suit in the district court of the United States for the western district of Missouri to have said discharge in bankruptcy to said Snyder cancelled and set aside solely upon the ground that said Snyder had failed to schedule and report in the bankruptcy proceedings as a part of his estate the six (6) acres of land which said deed of July 27th, 1864, from James and wife to Snyder covered, and such proceedings were had in said suit that the proper judgement was entered in said Norman suit setting aside and annulling said discharge in bankruptcy by order made August 3, 1871. On February 11th, 1871, said assignee, Vose, resigned and the bankrupt court accepted his resignation and the same day appointed Henry N. Ess assignee in bankruptcy of said Joseph E. Snyder, and ordered said Vose to convey to the said assignee, Ess, all estate of the bankrupt. but he never made any conveyance. On June 14th, 1871, said bankrupt court ordered said assignee, Ess, to file a schedule of the property of said Snyder, bankrupt, and on August 19, 1871, said Ess made report to said bankrupt court of the lands covered by said two deeds to said Joseph E. Snyder, made by said David E. James and wife, and under orders of said bankrupt court said assignee, Ess, in form sold to Byron Judd for fifty-one hundred and twenty dollars ($5,120) and made to said Judd a deed dated October 20th, 1871, purporting to convey to said Judd for that consideration lands described therein as follows, to wit, situate in Wyandotte county, Kansas, thus described:

Beginning at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner, section eleven (11), township eleven (11) south, range twenty-five (25) east, of the sixth (6th) principal meridian on the northwestwardly line of James street extended, as shown by the plat of Kansas City, Kansas, on file in the register of deeds office of said county, on page 9 of the Book of Plats, filed on the 3rd day of May, 1869, by David E. James and others; thence south sixty-one and one-half (61½) degrees west six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet to the said northwestwardly line of James street extended; thence north twenty-eight and one-half *and one-half* (28½) degrees west on said northwestwardly line of James street

three hundred (300) feet to the beginning, containing four (4) acres, more or less.

447 Also beginning at the same point as last above and thence north sixty-one and one-half (61½) degrees east to the Missouri river; thence down along said river south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the northwestwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west three hundred (300) feet to the beginning, containing two (2) acres, more or less.

The point on the northwardly line of James street extended mentioned in said conveyance to Judd is on the southwesterly line of the land conveyed by David E. James and wife to said James F. Joy, mentioned in said bill of complaint and heretofore in said this answer, and the two (2) acres of land in said deed to Judd last described *was* a part of the land which said James and wife had so conveyed to said Joy and which was then owned by said Hannibal and St. Joseph Railroad Company.

Said deed to Byron Judd by said assignee, Ess, purports and was intended to convey lands conveyed to said Joseph E. Snyder by the deed of July 27th, 1864, outside of and beyond the four acres of land conveyed to said Snyder by said deed of April 13th, 1869.

The assignee and bankrupt court in that way expressly ratifying and adopting the conveyance of July 27th, 1864, to said Snyder and seeking to derive full benefit therefrom as if it had been in the same form at the time said Snyder was a bankrupt as when it was recorded in 1868.

Said assignee, Ess, and said bankrupt court also sought to dispose of so much of the land covered by said deed of April 13th, 1869, to said Joseph E. Snyder as was not included in the conveyance to said Joseph E. Snyder of date July 27th, 1864, but these defendants insist and claim that the conveyance to said Judd passed no right, title, interest, or estate whatever to or in so much of the land covered by said deed of April 13th, 1869, to said Snyder as was not included in said conveyance to Snyder of July 27th, 1864, for the reason that said Snyder did not, at the time of going into bankruptcy, own or have any interest whatever in said land, which is the land in controversy in this suit, but acquired the same after he was adjudicated a bankrupt.

In the suit brought by said Norman before mentioned the land in controversy in this case was not claimed to be a part of the bankrupt estate of said Joseph L. Snyder. The orders in the bankrupt court for the sale of the land in controversy in this case were the usual formal orders for sale of property where there is no question about its being part of the bankrupt estate and did not bind nor include said Snyder.

Said Joseph E. Snyder never had any notice whatever of the order to sell the land in controversy in this case as a part of his bankrupt estate, nor was there ever in fact any adjudication *of* whatever by said bankrupt court that the land in controversy in this suit was

in any sense a part of his estate at the time he — adjudicated bankrupt.

Said bankrupt court *b*ever had jurisdiction of said Joseph E. Snyder to determine whether or not the land in controversy in this suit belonged to the bankrupt estate of the bankrupt, and the said bankrupt court never entered on that inquiry.

On January 17th, 1871, said Joseph L. Norman assigned and transferred to John P. Hanrion the claim which said Norman had against said Snyder and thereafter said Hanrion proved the same up and had it allowed on August 3rd, 1871, as a valid claim in his favor against said bankrupt estate for seven thousand and nine dollars and ten cents ($7,009.10).

Neither said Norman nor Traber ever after January 17th, 1871, had any claim or interest whatever in any claim against said bankrupt estate, and neither of them ever derived any benefit
448 from whatever said proceedings in said bankrupt court resulting in said sale by Assignee Ess to said Byron Judd, nor were either of them ever entitled to any benefit therefrom, nor did either of them in any way, directly or indirectly, cause or procure said sale to be made to said Judd, nor did they consent to nor did they in any way induce said proceedings in said bankrupt court.

Said assignee, Ess, and said Byron Judd at all times knew of the facts hereinbefore stated, showing that the land in controversy in this case was not part of said bankrupt sale.

Said Traber is an attorney-at-law, and in the regular course of his business conducted said suits in attachments against said Joseph E. Snyder, and at the execution sales therein bought in the lands for his said clients and to secure the fees which they had agreed to pay him therefor, getting release from his said client for that part of the lands in controversy for said Tourtelott.

Said judgments in attachment cases — rendered on valid and subsisting claims against said Snyder, which the parties therein had a right in law to collect, and were in all respects duly rendered and given.

Neither said Traber nor Norman, nor both of them, had any interest in the claims sued on in said attachments suits, nor did they agree to run all risks in prosecuting the same or the payment of the expenses of the litigation, or agree to give the parties plaintiff something or nothing, according to the result of the enterprise. Said Traber, after said sheriff's deeds to himself, conveyed to his clients the parts of the lands purchased in by him which they were to have.

The land taken in attachment in said suits was the land conveyed to said Snyder by said David E. James and wife by said deed of April 13th, 1869, not including said deed to Snyder of July 27th, 1864, and neither of the plaintiffs in the attachment case nor said Traber or Norman ever did or consented to the doing of anything that would preclude or stop them from acquiring and holding title to said lands so attached against said Judd.

The said Traber made *a* several conveyances in said bill of complaint, but the considerations thereof are not correctly stated in said bill.

These defendants deny that at the time of their purchase of the land now owned by said Tourtelott that they had full or any notice whatever of the matters and things in said bill of complaint alleged, except as in this answer specifically admitted, and deny that they have ever falsely or fraudulently set up or pretended to have a title to the land so conveyed to them, or that they have ever brought any vexatious suit whatever against the complainants or any of them in ejectment, but they say that they acquired and have always claimed to have a good title to said land so conveyed to them, said Traber and Norman, and that their said action of ejectment is not vexatious.

That defendants deny that said Joseph E. Snyder ever acquiesced in or permitted the said sale and conveyance by Assignee Ess to Judd to be effected.

These defendants deny that they or either of them are wholly or at all insolvent, and deny that no damages or costs can be recovered against them on execution, and on the contrary say that said Tourtelott is himself worth much more than the value of all the land in controversy in this case, and has property subject to execution in the State of Kansas out of which could be realized more than ten thousand dollars ($10,000).

These defendants deny that said complainants or any of them or any one under whom they pretend to have or claim title to the lands in controversy in this suit ever had, prior to 1879, any possession whatever of such lands, nor have they or either of them ever had any possession whatever thereof, except as they acquire- the
449 same as hereinbefore stated in said answer.

Further answering, these defendants say that after said Byron Judd obtained his conveyance from said assignee, Ess, he made a quitclaim deed to Stephen A. Cobb and Allison B. Bartlett, dated July 31st, 1872, for the consideration of five hundred dollars ($500) — all of said lands covered by said conveyance from said assignee, Ess, to said Byron Judd.

Afterwards said Stephen A. Cobb and the complainants Sophia A. Cobb, then his wife and now his widow, and said Allison B. Bartlett and his wife, by warranty deed dated August 15th, 1872, then delivered, for the consideration of eight hundred and fifty dollars ($850.00), — conveyed to the Hannibal and St. Joseph Railroad Company the last parcel of land described in said deed by said assignee, Ess, to said Byron Judd, containing two (2) acres, more or less, which was a part of the land conveyed by said David E. James and wife to said James F. Joy as hereinfore stated, and thereby said Cobb and Bartlett, so far as they could, ratified and confirmed said deed of David E. James and wife to said Joseph E. Snyder, dated July 27th, 1864, the land so conveyed to said railroad company being covered by the last-mentioned deed, but not being covered by the deed of David E. James and wife to Joseph E. Snyder, dated April 13th, 1869.

After said Stephen A. Cobb and Allison B. Bartlett got the said deed to themselves from said Judd and wife, dated July 31st, 1873, they on investigation became satisfied that they did not have any

title whatever, legal or equitable, to or in the land in controversy in this case covered by said deed to Snyder of April 13th, 1869, not included to him in said deed to him of date July 27th, 1864, and they abandoned all claim thereto and all pretense of possession thereof.

They suffered a tax sale certificate to issue against such land on a sale thereof duly made for failure to pay the taxes thereon and had the same held by a third person for their benefit, and after the issue of said certificate they paid one year's taxes on the land to said McAlpine, one of the complainants herein, while he was county treasurer of said Wyandotte county, but he failed to enter such payment in the proper county books and afterwards said Lafayette Traber, subsequent to the sheriff's deed herein, redeemed the land so conveyed to him — said sheriff's deeds or a part thereof from said tax sale and paid into the treasury of the county the amount necessary therefor according to the records of the county, which, however, did not include anything for one year's taxes paid as before stated by said Cobb and Bartlett, so that when said Bartlett and the representatives of said Cobb then alive got the redemption money to which they were entitled they did not receive as much by about ninety dollars ($90.00) as they would have received had said McAlpine performed his duty as such treasurer and entered in the proper county book the fact of the payment of said one year's taxes and the amount thereof, and they thereupon called upon said McAlpine to make good the loss which they had sustained on account of his neglect of duty, and he thereupon proposed to said Bartlett and said Sophia A. Cobb, the widow of said Stephen A. Cobb, who had shortly before that time died, that if said Bartlett and said Sophia A. Cobb would in her own right and as administratrix of her husband's estate make a quitclaim deed to him of said land in controversy in this case, to pay such sum so claimed and lost on account of his said neglect of duty, and thereupon Allison B. Bartlett and Sophia A. Cobb made to said McAlpine a quitclaim deed to said land so in controversy in this suit in 1879 and received from said McAlpine said sum of ninety dollars ($90.00) or about that and nothing else whatever as the consideration of such conveyance. In this transaction said McAlpine acted under the advice of the complainant Mason, who was, in consideration of an interest in the speculation, to use his legal skill and all the means he
450 could to fortify and strengthen this abandoned claim thus acquired by waking up, getting other pretended claims to the property, and also to get these defendants out of the possession of the land which they had bought in good faith and paid one thousand dollars ($1,000) for in cash, *for* as said McAlpine and said Mason then well knew, and to get said McAlpine and himself into possession thereof.

To accomplish this end said Mason obtained from the heirs of said David E. James, who died about 1872, for a nominal consideration, a quitclaim of the land in controversy, which gave no title whatever, for the reason that said heirs had no right, title, interest, or estate to convey.

Said Mason also procured from one Douglass a quitclaim deed of such title as he had under a tax deed to him of five (5) acres of land out of thirty-eight (38) acres, being all the said allotment 15 to said David E. James in said partition suit for the taxes of 1868, which tax deed does not cover any part of the land in controversy in this suit, and is void for vagueness in the description of the property covered thereby and for various irregularities in the tax-sale proceedings prior to the issue of the deed. Said Mason also, in furtherance of the same object, procured from one Richards for a nominal sum a conveyance of such interest as he had under tax deed made to him purporting to cover land thus described, to wit:

"Four (4) acres, described as follows, viz: Commencing at northwest corner of tract conveyed to J. F. Joy by D. E. James, south twenty-six (26) degrees and ten (10) minutes east three hundred (300) feet, south sixty-two (62) degrees and ten (10) minutes west five hundred and eighty (580) feet, north twenty-eight (28) degrees ten minutes west three hundred (300) feet, north sixty-two (62) degrees ten (10) minutes east five hundred and eighty (580) feet to beginning, excepting two (2) acres off the easterly — and fronting on the Missouri river, redeemed February 8th, 1873, by Hannibal and St. Joseph Railroad Company," which last-mentioned deed does not cover the land in controversy in this case, and is void, also, for want of any notice for the sale of said land for delinquent taxes and for other irregularities in the tax-sale proceedings.

The pretended titles above stated are all the title *the* which the complainants herein have or ever have had to the lands in controversy in this case. The lands in controversy in this case are now of the value of over ten thousand dollars ($10,000), and the complainants herein are seeking, by virtue of the pretended titles above mentioned and of none other, to obtain possession and hold said lands against said these defendants, who have bought in good faith and paid therefor, as above stated, so much of said land as is covered by said deed to these defendants by said Trader and Norman. These defendants state that these complainants have not now and never have had any claim whatever to the lands in controversy in this case possessing any merit at all, and that if the title to said lands in controversy vested in Joseph E. Snyder was not passed by the sheriff's deeds to said Traber, then the title to said lands remains and is in the heirs-at-law of said Joseph E. Snyder, deceased.

These defendants say that there is no equity whatever, as they are advised by their counsel and believe, in the bill of complaint, and that whatever rights to the said lands in controversy herein said complainants or any of them have are strictly legal rights, to be adjudicated and determined in actions at law.

At the time the complainants acquired each and all of their pretended titles to the land in controversy they each and all knew all the facts hereinbefore stated as to the title of defendants in the land, their claim, and their possession of the land.

Having fully answered, defendants ask and pray to be hence dismissed with their costs and for all further relief.

451 PRATT, BRUMBACK AND FERRY,
Solicitors for Defendants Tourtelott & Allcutt.

WALLACE PRATT,
J. BRUMBACK, *Of Counsel.*

EXHIBIT "A."

Know all men by these presents that I, David E. James, of the county of Wyandotte and Territory of Kansas, do hereby bind myself, my heirs and assigns, to convey unto James Gladden, his heirs and assigns, by a good and valid deed one undivided ten (10) acres of the west half (½) of the southwest quarter (¼) of section number eleven (11) and of the east half (½) of the southeast quarter (¼) of section number ten (10), in township number eleven (11), being in the forks of the Kansas and Missouri rivers, in the county of Wyandotte, Kansas Territory, and all consisting of one undivided ten (10) acres.

It is hereby covenanted and agreed that the aforesaid conveyance shall be made at any time within one year from the date of this agreement.

It is also agreed and understood that said conveyance is to be made subject to and in accordance with the terms and conditions of a certain mortgage given upon said real estate by said James to one Silas Armstrong, and which is recorded in the proper office of the county of Wyandotte, Kansas Territory.

In witness whereof I have hereunto set my hand and seal this 1st day of March, A. D. 1860.

DAVID E. JAMES. [L. S.]

Know all men by these presents that I, the within-named James Gladden, in consideration of one thousand dollars ($1,000) to me in hand paid, have bargained, sold, assigned, and set over all my right, title, interest, claim, property, and demand whatsoever in and to the within bond unto the said Henry R. Seegar and his assigns forever.

In witness whereof I have hereunto set my hand and seal this 5th day of March, A. D. 1860.

his
JAMES x GLADDEN.
mark.

In the presence of—
LOUIS B. SCOTT.
JOSEPH E. SNYDER.

STATE OF MISSOURI, }
County of Jackson. }

Be it remembered that on this 6th day of March, 1860, before me, John B. Hough, clerk of the Kansas City court of common pleas for Kaw township, for the county and State aforesaid, personally ap-

peared James Gladden, who is well known to me as the person whose name is subscribed to the foregoing instrument of writing, and acknowledged the same to be his voluntary act and deed for the purposes and uses therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of Kansas, on the day and date above written.

JOHN C. HOUGH, *Clerk of —*,
By LOUIS B. SCOTT, *D. C.* [SEAL.]

Recorded October 1st, A. D. 1860, at 5 p. m.

V. J. LANE,
Register of Deeds,
By JAMES A. CRUISE, *D. R.*

452 EXHIBIT "B."

This indenture made this 27th day of July, in the year of our Lord one thousand eight hundred and sixty-four between David E. James and Jennie M. James, his wife, of the first part, and Joseph E. Snyder, of the second part, witnesseth:

The said party of the first part, for and in consideration of the sum of one dollar to — in hand paid by the said party of the second part, the receipt of which is hereby confessed and acknowledged, have granted, bargained, sold, remised, released, aliened and confirmed and by these presents do grant, bargain, sell, remise, release, alien and confirm unto said party of the second part his heirs and assigns forever;

Commencing at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet, from the southwest corner of section eleven (11), township eleven (11), range twenty-five (25) in the county of Wyandotte, State of Kansas; thence south sixty-one and one-half (61½) degrees west six hundred and forty (640) feet two (2) inches; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east eight hundred and seventy-one (871) feet and two (2) inches; thence along the southwest bank of the Missouri river north twenty-eight and one-half (28½) degrees west three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the place of beginning containing six (6) acres together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion, reversions, remainder, remainders, rents, issues, and profits thereof and all the estate, title, right, interest and demand whatsoever of the said party of the first part either in law or in equity of, in and to the above-bargained premises with the hereditaments and appurtenances.

To have and to hold the same premises as above described with the appurtenances unto the said party of the second part and to his heirs and assigns forever.

In witness whereof the said part- of the first part have hereunto set *his* hand- and seals the day and year first above written.

D. E. JAMES. [SEAL.]
JENNIE M. JAMES. [SEAL.]

Sealed and delivered in the presence of—

F. L. PARKER.
TRACY W. ROOT.

STATE OF MICHIGAN, } ss:
Washtenaw County, }

On this second day of August, A. D. 1864, before me, the subscribed, clerk of the circuit court of the county of Washtenaw aforesaid, personally appeared David E. James and Jennie M. James, to me personally known to be the identical persons described in and who executed the within conveyance, and acknowledged the instrument to be their own and voluntary act and deed; and the said Jennie M. James, on an examination apart from her said husband, having been first made acquainted with the contents of such conveyance, acknowledged that she executed the same and relinquished her dower in the real estate therein mentioned freely, without any fear or compulsion of her said husband.

TRACY W. ROOT, *Clerk.* [SEAL.]

[Revenue stamp.]

Endorsed: No. 4668. Nicholas McAlpine, James M. Mason, and Sophia A. Cobb *vs.* George W. Tourtelott, George P. Allcutt, *et al.* Answer of Tourtelott and Allcutt. Filed Aug. 4th, 1884. A. S. Thomas, clerk, by Frank J. Thomas, deputy. Pratt, Brumback and Ferry.

453 Here in original case made is a plat of land in controversy.

(Here follows diagram marked p. 453.)

454 Defendants offered and next read in evidence the joint answer of Lafayette Traber and C. F. Welland to the bill of complaint filed in said cause in the United States circuit court.

Plaintiffs objected because same was irrelevant, incompetent, and no proof against them. The court overruled the objection.

Which joint answer is in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Kansas.

NICHOLAS MCALPINE, JAMES M. MASON, and SOPHIA A. COBB
vs.
TERESA SNYDER, GEORGE W. TOURTELOTT, and GEORGE P. Allcutt and Lafayette Traber and C. F. Welland and Others. } In Equity.

The joint answers of Lafayette Traber and C. F. Welland to the bill of complaint exhibited herein against them and others, filed June 3rd, 1884.

The said Lafayette Traber and C. F. Welland, saving the benefit of all exceptions to said bill of complaint, for answer to so much thereof as they are advised is material for them to answer unto, say—

That said Traber, on the — day of ——, 1875, took and had a conveyance in fee simple absolute of a part of the land described in said bill of complaint; which part is described as follows, to wit:

Beginning six hundred and forty-two (642) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from a point thirty-six hundred and four and a half (3,604½) feet north sixty-two and one-half (62½) degrees west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and thence south sixty-one and one-half (61½) degrees west two hundred and eighty-nine (289) feet; thence south twenty-eight and one-half (28½) degrees east forty (40) feet; thence north sixty-one and one-half (61½) degrees east two hundred and eighty-nine (289) feet; thence north twenty-eight and one-half (28½) degrees west forty (40) feet to the place of beginning, being forty (40) feet off of the northwestern side of said property so described in said bill of complaint and the same as designated and marked on the plat which is attached to and made a part of the answer of the defendants Tourtelott and Allcutt "L. Traber."

That said defendant, Welland, on the 6th day of December, 1882, took and had a conveyance in fee simple absolute — a part of the lands described in said bill of complaint; which part is described as follows, to wit:

Beginning six hundred and forty (640) feet and two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from a point thirty-six hundred and four and one-half (3,604½) feet north twenty-eight and one-half (28½) degrees west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), Wyandotte county, Kansas, and thence south sixty-one and one-half (61½) degrees west two hundred and eighty-nine (289) feet; thence south twenty-eight and one-half (28½) degrees east forty (40) feet; thence north sixty-one and one-half (61½) degrees east two hundred and eighty-nine (289) feet; thence north twenty-eight and one-half (28½) degrees west forty (40) feet to the place of the beginning, and being that part of the property described in said bill which is marked "C. F. Welland" on a plat or tracing of said

property in said bill described, which said map or plat is filed with and made a part of the answers of said defendants, Tourtelott and Allcutt.

And the said defendants, Traber and Welland, both refer to and adopt said plat or tracing as correctly showing the location
455 of the land belonging to each respectively as they claim, and both said Traber and said Welland refer to and adopt as their answer the answer of said defendants, Tourtelott and Allcutt, so far as the same may be applicable to their case.

The above land so described as belonging to said Traber being the same as conveyed to him by Henry R. Seegar by deed dated the — day of ——, 187–, and for which he paid the said Seegar the sum of two hundred and fifty dollars ($250.00), with and under the belief that he acquired thereby a good and perfect title to such land and without any notice of any defect in the title thereto.

And the said land so described as belonging to said Welland being the same as conveyed to him by Henry R. Seegar and wife by deed dated the 6th day of December, 1882, and for which he paid the said Traber the sum of $2, with and in the belief that he acquired thereby a good and perfect title to such land and without any notice of any defect in the title thereto.

That defendants do not nor does any of them claim any interest in any part of said land described in said complainants' bill of complaint, except as above set forth.

Said defendants have a perfect record title to said lands so claimed by them respectively derived from the United States, the claim thereof being as follows:

Patent dated July 13th, 1857, from the United States to Silas Armstrong, conveying lot No. 1, of fractional section ten (10), containing ninety-six (96) acres; lot number one, of fractional section eleven (11), containing one hundred and eighty-one hundredths (1—.81) acres: lot number one, of fractional section fourteen (14), containing seventy-seven (77) acres; the northeast fractional quarter (¼) of section fifteen (15), containing six and fifty-three hundredths (6.53) acres, and other lands in township eleven (11), range twenty-five (25) east, of the sixth principal meridian.

2. Deed, dated July 15th, 1859, for the consideration of forty-five hundred dollars ($4,500), made by Silas Armstrong and wife to David E. James, conveying to said James the undivided three-eighths (⅜) of a tract lying north of the old bed of Turkey creek, bounded south by the same, east by the Missouri State line, north by the Missouri river, and west by the Kansas river, consisting of fractional sections eleven (11), fourteen (14), and fifteen (15), said undivided three-eighths (⅜) containing about ninety (90) acres.

Various other undivided interests in said land so patented to Silas Armstrong were acquired from and under him by other parties.

3. In partition suit No. 911, of Thomas Ewing and others against William Weer, David E. James, and others mentioned in said bill of complaint, there was set off and assigned to said David E. James in severalty a tract containing forty-three and fifty-three hundredths (43.53) acres out of said land so patented to Armstrong, which tract

is marked allotment No. 15 on the plat with the report of the commissioners in partition.

Said allotment number 15 includes the land now owned by said Tourtelott, and also all land covered by the two deeds from David E. James and wife to Joseph E. Snyder hereinafter mentioned, and also by the deed from said David E. James and wife to James F. Joy hereinafter mentioned. Said allotment No. 15, to David E. James, made in said partition suit, is correctly described in said bill of complaint.

4. Warranty deed, dated April 13th, 1869, from David E.
456 James and wife to Joseph E. Snyder, conveying land in Wyandotte county, Kansas, thus in said deed described as follows, to wit:

Beginning at the southwest corner of a tract of land conveyed by one James to one James F. Joy, and now known as railroad land, said southwest corner being the northwest corner of a certain parcel of land now owned by said James, thence running south sixty-one (61) degrees and fifty (50) minutes west five hundred and eight and eight-tenths (508.8) feet; thence south twenty-eight (28) degrees ten (10) minutes east three hundred (300) feet; thence north sixty-one (61) degrees and fifty (50) minutes east 580.8 feet; thence north 28 degrees 10 minutes west three hundred (300) feet to the place of beginning, and to contain four (4) acres, said land being in township eleven (11), range twenty-five (25). The land conveyed to said James F. Joy mentioned in said deed of April 13th, 1869, to Joseph E. Snyder, is the conveyance dated August 24th, 1868, by David E. James and wife to James F. Joy mentioned in said bill of complaint which copies the description of land in said deed with substantial accuracy, there being however accompanying said deed a plat which is part thereof, which makes the description of land thereby conveyed clear and removes all ambiguity therein.

5. Two sheriff's deeds to Lafayette Traber for the consideration of ten hundred and two ($1,002) dollars and by sheriffs of Wyandotte county, Kansas—one dated April 19th, 1875, and one dated March 8th, 1879—conveying land owned by said Joseph E. Snyder in said county, thus described, to wit:

Beginning at a point six hundred and forty (640) feet and two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point thirty-six hundred and four and one-half (3,604½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), in township eleven (11), in range twenty-five (25), and running from said first-named point south sixty-one (61) degrees thirty (30) minutes west along the northwest line of the land formerly owned by David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east three hundred (300) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet and thence north twenty-eight (28) degrees and thirty (30) minutes west three hundred (300) feet to the beginning.

Said sheriff's deeds were made to convey said land which had

been sold by the sheriff of said Wyandotte county, according to law, under and by virtue of special executions on judgements in attachments suits against said Joseph E. Snyder duly rendered by the district court of Wyandotte county, Kansas, in suits commenced in May, 1874, *by* wherein said land so conveyed to said Traber had been duly seized and taken in attachment, one of said attachment suits being brought by C. F. Welland, who recovered judgement therein against said Snyder for three hundred and eighty-seven — ($387.00) and costs, and the other being brought by Henry R. Seegar, who recovered therein judgement for five hundred and fifteen dollars and costs against said Snyder; said judgements being duly recovered, rendered, and given September 10th, 1874.

The land attached in each of said cases and sold and conveyed to said Traber was duly and regularly attached and ordered to be sold and sold on special execution in said attachment suits.

All of which conveyances are common to the titles of both said Traber and Welland to the parts of said land described in plaintiffs' bill, which they claim in the manner and extent aforesaid.

That said land hereinabove claimed by said Traber was by him, by deed dated the — day of ——, 18—, conveyed to said Henry R. Seegar, who, in turn, at the date above mentioned,
457 18—, reconveyed the same to said Traber and by virtue thereof he still claims to hold the title thereto and to be the *bona fide* holder thereof.

That said land hereinabove described as being claimed by said defendant, C. F. Welland, was by said Traber shortly after the deed made to him by said sheriff conveyed by deed to Henry Tobner for a good and valuable consideration, and was in turn by deed dated the — day of ——, 18—, by said Tobner for a good and valuable consideration conveyed to said defendant, C. F. Welland, who has ever since claimed to own the same. Said plaintiffs say that immediately after the execution of said first deed to said Traber by the sheriff of said Wyandotte county conveying to him said tract of land claimed by the plaintiffs he, said Traber, took possession of the same and held it until the conveyance by him and said Norman to said Tourtelott and Allcutt of that portion of the same claimed by them in their said answer to said plaintiffs' bill and the said conveyance by him to said Seegar and said Tobner.

Plaintiffs say that in the month of July, 1879, while the said Traber was in the possession of the land so claimed now by him, the said Tobner was in the possession of the land so now claimed by said Welland; said plaintiffs wrongfully and forcibly and without the knowledge or consent of either said Traber or said Tobner forcibly entered upon and took possession of the said land so claimed and then owned by said Traber and said Tobner and have ever since that time claimed to hold the possession of the same by themselves and their tenants, and this without any right or shadow of right so to do.

That on the — day of ——, 1863, the said Traber and the said Welland commenced their suits in the district court of Wyandotte county, Kansas, in ejectment to recover the possession of said lands

claimed by each respectively, which suits were against said McAlpine and Mason and their tenant and are still pending undetermined in said court; but said Traber and Welland say that it was and is their determination to prosecute said ejectment suits so commenced by them to a final determination on their merits; and these defendants now here answering claim and insist that said McAlpine and Mason have a complete and adequate remedy at law for the enforcement of all rights, if any they have, to said lands so now claimed by said Traber and Welland, and that there is no equitable ground whatever for a resort to a court of chancery in the premises.

These defendants here answering deny that said complainants are the lawful owners of the land so claimed by said Traber and Welland respectively or any part thereof, and they deny that said complainants or any of them have any title legal, equitable right, title, or interest or estate to or in said land or any part thereof so claimed by said Traber and Welland or either of them, which is a part of the tract three hundred (300) feet by three hundred and forty (340) feet in said bill of complaint first described.

These defendants admit that said patent to Armstrong included said land and other land now the present site of said Kansas City, Kansas, and bounded as in said bill stated.

The conveyance in July, 1859, to David E. James by said Armstrong and wife to a certain undivided interest of ninety (90) acres in the bill of complainants mentioned is the conveyance of July 18th, 1859, of three-eighths ($\frac{3}{8}$) undivided from Silas Armstrong and wife to said James in this answer mentioned.

And — to the title bond from David E. James to James Gladden and the assignment thereof by Gladden to Henry R. Seegar, mentioned in the bill of complaint, these defendants say that they have no personal knowledge thereof, but they are informed and believe that said James made to said Gladden a bond to convey to him
458 one undivided ten (10) acres within one year, and that said Gladden for the consideration of one thousand dollars ($1,000) to him paid or caused to be paid by Henry E. Seegar assigned said bond to said Seegar, which bond, assignment, and acknowledgement thereof were recorded in the office of the register of deeds of Wyandotte county, Kansas, in Book "A," page 462, on October 1st, 1862. Exhibit "A" hereto annexed and made a part of this answer is a correct copy from such records of said bond, assignments, and acknowledgement.

In so far as the allegations in said bill of complaint respecting the terms of such bond and assignments differ from the copy thereof above referred to, these — deny each and every and all of the same.

These defendants further say that they are informed and believe that when said assignment was made to said Seegar said Joseph E. Snyder was largely indebted and wholly insolvent, and that while it is, as they believe from information and belief, true that the consideration for said assignment by said Gladden to said Seegar moved from said Joseph E. Snyder it is also true that he procured and caused said assignment to be made in fraud of the rights of his

creditors and to prevent, hinder, and delay them from collecting their just debts, and that there never was any writing whatever to manifest or show that said Seegar held such bond or any interest thereunder in trust for said Snyder.

These defendants are further informed and believe that when said assignment was made and delivered said Seegar had no knowledge thereof and did not learn of the existence of the same until long afterwards.

These defendants further state that they are advised by their counsel that under the circumstances said Snyder could not enforce against said Seegar any trust whatever respecting the land covered by said bond, and under the advice of their counsel they deny that said Joseph E. Snyder was by virtue of said bond and assignment entitled to a conveyance from said Jame of any land whatever, and also that he was the equitable owner of any land whatever.

As respects the deed dated July 27th, 1864, from David E. James and wife to Joseph E. Snyder for six (6) acres of land mentioned in the bill of complaint these defendants say that said deed was duly recorded on October 23rd, 1868, in the office of the register of deeds of said Wyandotte county, in Book L, page 135. Exhibit "B," hereto attached and made a part of this answer, is a correct copy from such record of such deed.

The original of such deed is not in the possession nor under the control of these defendants or either of them, nor have they been able, though they have through their counsel sought therefore, to find the same.

These defendants have no personal knowledge whatever as to how or when said deed was written, but state that from the record thereof the same appears to have been duly acknowledged by said David E. James and his wife August 2nd, 1864, and that the deed appears fair and all right on such record.

These defendants have no information other than from the allegations of said bill and statements of persons having no personal knowledge of the facts as to whether, when said deed was acknowledged and delivered, any blank or blanks existed therein, and they therefore, having no belief nor information sufficient to form a belief in the premises, deny that any such blank or blanks existed and ask that the complainants be required to make strict proof that such deed was, as they allege in their bill of complaint, a carte-blanche quitclaim deed, and also that the same was left blank as to the name of the grantee and blank as to the description of the property to be conveyed, and also that the same was given to temporarily appease said Snyder.

These defendants admit the making of said partition of in the suit of Thomas Ewing and others against William Weer and
459 others and state that said Henry R. Seegar was a party defendant with said David E. James in said suit, but that said Joseph E. Snyder was not a party thereto, and they further state that in such suit it was found and adjudged that said David E. James was the owner of a certain undivided interest in the land sought to be partitioned, and said tract, allotment number 15, men-

tioned in the bill of complaint, of forty-three and fifty-three hundredths (43.53) acres, was assigned to him as a part of his share of said land.

These defendants admit that said Joseph E. Snyder was adjudged bankrupt on December 24th, 1867, by the district court of the United States for the western district of Missouri on his own petition, filed December 2nd, 1867.

These defendants further state that in such bankrupt proceedings Samuel A. Vose was duly appointed and qualified as assignee of said Snyder on March 2nd, 1868, and on the same day the proper registry in bankruptcy made to said Vose the proper assignment of the effects of said Snyder; that in the course of said bankrupt proceedings a discharge was granted to said Snyder on September 25th, 1868, but such discharge was afterwards by said district court of the United States and in proceedings duly *and* had for the purpose set aside and vacated and annulled, and said Snyder never afterwards received or obtained any discharge in bankruptcy, and he afterwards died, in 1879.

These defendants admit that said Joseph E. Snyder did not in said bankrupt proceedings schedule or report as part of his assets said bond from said David E. James to Gladden, assigned to Seegar, or said deed dated July 27th, 1864, made to him by said James, nor any lands covered by either of said documents, but these defendants say that said Joseph E. Snyder always denied that he falsely or fraudulently concealed or omitted to schedule such documents or the property covered thereby.

These defendants have no personal knowledge as to said bankrupt proceedings, but rely upon the record of the court for information respecting the case.

Defendants further say that they have no personal knowledge or information sufficient to form a belief as to whether or not said Seegar was, as alleged in the bill of complaint, a silent witness or a witness at all to said Snyder's omission from or concealment of assets in said bankrupt proceedings, or whether or not said Seegar knew of said alleged concealment, and ask that said complainants be required to make strict proof of the allegation in the bill in that respect.

These defendants admit that David E. James and his wife made to James F. Joy the conveyance of ten (10) acres of land, a part of said allotment number 15 in said partition suit mentioned in said bill of complaint, such deed being dated August 24th, 1868, and recorded in the office of the register of deeds of said Wyandotte county, in Book L, page 342, on March 20th, 1869.

These defendants have no personal information as to the making of such conveyance or the real consideration therefor, and ask that complainants be required to make strict proof of the same, their allegations in their said bill of complaint respecting the consideration of such conveyance.

These defendants deny that said Joseph E. Snyder ever unlawfully or without any authority filled up said deed of July 27th, 1864, with his own name as grantee or the description of the land therein

as appears by the records thereof, but say that from information and all the circumstances which have come to their knowledge they believe that whatever said Joseph E. Snyder may have done in the matter of writing of filling up such conveyance of July 27th, 1864, from James and wife to Synder was done lawfully and either under authority from said David E. James and wife when done or thereafter they ratified and approved the act of said Synder, and
460 as evidence thereof these defendants say that there now appears of record in the office of the register of deeds of said Wyandotte county, in Book M, page 207, a document purporting to be signed by said Henry R. Seegar, dated April 28th, 1869, referred to in the bill of complaint as the —, which document, except the signature- thereof of Henry R. Seegar, Joseph E. Snyder, and B. Sachs, was, as these defendants are informed and believe and charge the truth to be, written by said David E. James on said bond which he had given to said Gladden for ten (10) acres of land, and which document, including the signatures thereto, is of the following tenor, to wit:

STATE OF MISSOURI, } ss:
Jackson County, }

In consideration of one dollar to me in hand paid and the absolute fulfillment of the within bond by conveyance of six (6) acres of land to Joseph E. Snyder by deed dated July 27, 1864, and recorded on the 28th of October, 1868, in Liber L of Deeds, on page 135 and 136, in the office of the register of deeds in and for the county of Wyandotte, State of Kansas, this bond, recorded in said office in Record "A," page 462, is hereby cancelled and discharged and absolutely fulfilled.

Kansas City, Mo., April 28th, 1869.

HENRY R. SEEGAR.

Witnessed by—

JOSEPH E. SNYDER AND
R. SACHS.

This document was recorded in said register's office on July 1st, 1869.

These defendants, further answering, deny that said Joseph E. Snyder in filling up such conveyance of July 27th, 1864, if he filled up the same, as alleged in said bill of complaint, — without authority from said James and wife, and also deny that he made any mistake whatever in the description of land conveyed by such conveyance, and also deny that the said Snyder intended to or supposed that he was filling into said deed of July 27th, 1864, a six (6) acres of land fronting on the bank of said Missouri river as it was in 1868 or running back south sixty-one and one-half (61½) degrees west from said river bank six hundred and seventy-one (671) feet two (2) inches.

These defendants deny that there was any error or mistake what-

ever in the description of land covered by said conveyance of July 27th, 1864, or in the filling up of such conveyance, or that there was any ignorance whatever on the part of said Snyder of the proper angle to be taken from the southwest corner of section eleven (11), township eleven (11), range twenty-five (25), or that there was any ignorance whatever on the part of said Snyder of the washings of the bank of said Missouri river between 1864 and 1868.

These defendants also deny that said Snyder ever supposed that the bank of said river was in 1868 where it had been in 1864.

These defendants deny that said Snyder or any party to said conveyance of July 27th, 1864, ever supposed that such conbeyance covered the land in controversy in this suit or any part thereof or intended or proposed to make the same cover or include such land or any part thereof or intended or supposed that by such conveyance filled as it appears by the records thereof to be there located or conveyed to said Snyder six (6) acres of land running back eight hundred and seventy-one (871) feet and two (2) inches from the bank of said Missouri river as it was in 1868.

Said conveyance of July 27th, 1864, covered six (6) acres of land in existence when the conveyance was made and ever since and now, though a part thereof, about two (2) acres, was in 1868 and has been since in the Missouri river. There was no error or mistake whatever in the filling up of such conveyance of July 27th, 1864, or in the making thereof, but the same was at the time it was recorded in the precise form in which each and all of the parties
461 thereto intended and designed it to be, as these defendants verily believe.

These defendants deny that said David E. James and his wife ever disaffirmed any act of said Snyder in filling up said conveyance of July 27th, 1864, or in using such instrument to locate and convey, but, on the contrary, recognized and adopted such conveyance duly recorded as aforesaid and thereafter made an arrangement and agreement with said Snyder by which he was to convey back to said David E. James the land covered by such conveyance of July 27th, 1864, and by which said David E. James and his wife were to convey to said Joseph E. Snyder four (4) acres of land back from the Missouri river covering the land in controversy in this suit. Said Joseph E. Snyder and wife made and delivered to said David E. James a warranty deed dated April 12th, 1869, acknowledged April 14th, 1869, and recorded in the office of the register of deeds, in Book M, page 208, on July 1st, 1869, whereby said Snyder and wife conveyed to said James the six (6) acres of land conveyed by said deed of July 27th, 1864, from David E. James and wife to Snyder.

David E. James and wife, by warranty deed dated April 13th, 1869, acknowledged by said David E. James the same day and by his wife April the 17th, 1879, recorded in the office of said register of deeds, in Book N, page 50, on February 5th, 1870, conveyed to said Joseph E. Snyder four (4) acres of land. This last-mentioned conveyance is the same referred to in setting out the title of said Tourtelott and Allcutt to the land in controversy in this suit in the first part of this answer. Such conveyance covers two (2) acres of

land conveyed by said deed of July 27th, 1864, from James and wife to Snyder, and also about three (3) acres of land not covered by said last-mentioned conveyance, including the land in controversy in this case and that now owned by said Traber and Welland, as hereinbefore stated.

These defendants deny that said deed of July 27th, 1864, from James and wife to Snyder, or said deed of April 12th, 1869, from Snyder and wife to James, by any proper construction or any construction whatever embrace the lands in controversy in this suit or were intended to embrace the same, and they deny that it was a part of the agreement between James and Snyder as to the making of the two conveyances dated in April, 1869, that said Snyder should procure said Seegar to satify said title bond for ten (10) acres of land given by James to Gladden, or that in consideration of said satisfaction said James and wife were to convey to said Snyder four (4) acres of land — was to be in full satisfaction or final settlement of all rights that said Snyder had under or by virtue of said title bond of 1860.

These defendants deny that said conveyance to said Snyder of April 13th, 1869, was in any sense whatever in satisfaction of said title bond or in execution or in fulfillment thereof, or that it had any connection whatever with the performance of said bond or the release or satisfaction thereof.

These defendants deny that the real consideration of the satisfaction of said title bond for said ten (10) acres of land was the partition of said Snyder by his conveyance of April the 13th, 1869, of all or any of his interests in land growing out of or arising in any way in law or equity from under instruments which he then held under his said title bond as modified by verbal agreements by said alleged carte-blanche deed, or without any new consideration entering therein as a factor took its rise from, grew out of, or in any sense originated from said title bond.

These defendants deny that said David E. James, in procuring from said *Deegar* the before-mentioned satisfaction of said title bond and procuring from said Snyder said conveyance to himself of April 13th, 1869, of the six (6) acres of land or in giving said conveyance of April 13th, 1869, of said Snyder for four (4) acres of land, repudiated any mistake made by said Joseph E. Snyder or repudiated anything whatever done or attempted to be done by said Snyder or intended or designed to do or accomplish anything whatever other than what appears on the face of the several documents or to correct any mistake whatever of said Snyder or to effectuate or carry out any intention whatever of said Snyder which he had before failed to carry out.

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These defendants deny that said Joseph E. Snyder ever received or ever agreed to receive four (4) acres of land to the westward of said Joy land in full or final settlement of all his interests in said title bond, but say that the taking and making of such conveyance of four (4) acres of land was entirely independent of and distinct from said title bond and performance thereof and for new and distinct considerations.

These defendants deny that said satisfaction of said title bond by said Henry R. Seegar was a part of the transaction included and the making and delivery of said two conveyances for six (6) acres and four (4) acr-s respectively in April, 1869, and deny that such satisfaction was for any consideration whatever other than that stated on the face thereof.

These defendants admit that said David E. James and wife joined in making the plat of Kansas City, Kansas, mentioned in said bill of complaint and thereon marked on the designated — the four (4) acres of land conveyed by said James and wife to said Joseph E. Snyder by said deed of April 13th, 1869, marking such land on such plat with the name of said Snyder to show just what *I*-and they had intended to and did convey to said Snyder by said deed.

Said Snyder did not acquire any right to said four (4) acres of land under said plat of Kansas City, Kansas, but such plat is evidence against said James and wife to show the construction of said four (4) acres deed to said Snyder.

On February 9th, 1870, said Joseph L. Norman, then the owner of a claim for three thousand nine hundred and three dollars and seventy cents ($3,903.70) against said Joseph E. Snyder which he had purchased from E. Jaccard and Company, commenced suit in the district court of the United States for the western district of Missouri to have discharge in bankruptcy to said Snyder cancelled and set aside solely on the ground that said Snyder had failed to schedule and report in the bankruptcy proceeding as a part of his estate the six (6) acres of land which said deed of July 27th, 1864, from said James and wife to Snyder conveyed, and such proceedings were had in such suit that the proper judgement was entered in said Norman suit and annulling said discharge and bankruptcy by order made August 3rd, 1871. On February 11th, 1871, said assignee, Vose, resigned and the bankrupt court accepted his resignation and the same day appointed Henry N. Ess assignee in bankruptcy of Joseph E. Snyder and ordered said Vose to convey to the said assignee, Ess, all estate of the bankrupt, but he never made any such conveyance.

On June 14th, 1871, said bankrupt court ordered said assignee, Ess, to file a schedule of the property of said Joseph E. Snyder, bankrupt, and on the 19th day of August, 1871, said Ess made report to said bankrupt court of the lands covered by said two deeds to said Snyder made by said David E. James and wife, and under order of said bankrupt court said assignee, Ess, in form sold to Byron Judd for $5,120, and made to said Judd a deed, dated October 20th, 1871, purporting to convey to said Judd for that consideration lands described therein as follows, to wit, situate in Wyandotte county, State of Kansas, thus described:

Beginning at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11) south, range twenty-five (25) east, of the sixth (6th) principal meridian on the northwestwardly line of James street ex-
463 tended as shown by the plat of Kansas City, Kansas, on file

in the register of deeds office of said county, on page 9 of the Book of Plats filed on the 3rd day of May, 1869, by David E. James and others, thence south sixty-one and one-half (61½) degrees west six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet to the said northwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west on the said northwardly line of James street three hundred (300) feet to the beginning, containing four (4) acres, more or less.

And also beginning at the same point as last above and thence north sixty-one and one-half (61½) degrees east to the Missouri river; thence down along said river south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty (230) feet to the northwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west three hundred (300) feet to the beginning, containing two (2) acres, more or less.

The point on the northwardly line of James street extended mentioned in said conveyance to Judd is on the southwesterly line of the land conveyed by David E. James and wife to James F. Joy mentioned in said bill of complaint and heretofore in this answer, and the two (2) acres of land in said deed to Judd last described *was* a part of the land which said James and wife had so conveyed to said Joy and which was then owned by said Hannibal and St. Joseph Railroad Company.

Said deed to Byron Judd by said assignee, Ess, purports and was intended to convey land conveyed to said Joseph E. Snyder by the deed of July 27th, 1864, outside of and beyond the four (4) acres of land conveyed to said Joseph E. Snyder by said deed of April 13th, 1868—

The assignee and bankrupt court in that way expressly ratifying and adopting the conveyance of July 27th, 1864, to said Snyder and seeking to derive full benefit therefrom as if it had been in the same form at the same time when said Snyder was adjudged bankrupt as when it was recorded in 1868.

Said assignee, Ess, and said bankrupt court also sought to dispose of so much of the land covered by said deed of April 13th, 1869, to said Joseph E. Snyder as was not included in the conveyance to said Joseph E. Snyder of date July 27th, 1864, but these defendants insist and claim that the conveyance to said Judd passed no right, title, interest, or estate whatever to or in so much of the land conveyed by said deed of April 13th, 1869, to said Snyder as was not included in said conveyance to said Joseph E. Snyder of July 27th, 1864, for the reason that said Joseph E. Snyder did not at the time of going into bankruptcy own or have any interest whatever in said land, which is the land in controversy in this suit, but acquired the same after he was adjudged bankrupt.

In the suit brought by said Norman aforesaid the land in con-

troversy in this case was not claimed to be a part of the bankrupt estate of said Joseph E. Snyder.

The orders of the bankrupt court for the sale of the and the conveyance of the land in controversy in this case were the usual formal orders for sale of property where there is no question about its being part of the bankrupt estate, and did not bind nor conclude said Snyder.

Said Joseph E. Snyder never had any notice whatever of the order to sell the land in controversy in this case as a part of his bankrupt estate nor was there ever in fact any adjudication whatever by said bankrupt court that the land in controversy in
464 this case was in any sense a part of his estate at the time he was adjudged a bankrupt.

Said bankrupt court never had jurisdiction of said Joseph E. Snyder to determine whether or not the land in controversy in this suit belonged to the bankrupt estate of the bankrupt court; never entered in that inquiry.

On January 17th, 1871, said Joseph L. Norman assigned and transferred to John P. Hanrion the claim which said Norman had against said Snyder, and thereafter said Handrion proved the same up and had it allowed on August 3rd, 1871, as a valid claim in his favor against said bankrupt estate for seven thousand and nine dollars and ten cents ($7,009.10).

Neither said Traber nor said Norman, after January 17th, 1871, had any interest whatever in any claim against said bankrupt estate and neither of them ever derived any benefit whatever from said proceedings in said bankrupt court resulting in said sale by Assignee Ess to said Byron Judd, nor were either of them ever entitled to any benefit therefrom nor did either of them in any way, directly or indirectly, cause or procure said sale to be made to said Judd, nor did they consent to or in any way induce said proceedings in said bankrupt court.

Said assignee, Ess, and said Byronn Judd at all times knew of the facts hereinbefore stated showing that the land in controversy in this case was not a part of said bankrupt estate.

Said Traber is an attorney-at-law and in the regular course of his business conducted said suits in attachment against said Joseph E. Snyder.

Said judgements in the attachment cases were rendered on valid and subsisting claims against said Snyder, which the parties therein had the right in law to collect and were in all respects duly rendered and given.

Neither said Norman nor Traber nor both of them had any interests in the claims sued on in said attachment suits, nor did they agree to run all risks of prosecuting the same or the payment of the expenses of the litigation or agree to give the parties plaintiff something or nothing, according to the result of the enterprise. Said Traber, after said sheriff's deeds to himself, conveyed to his clients the parts of the land purchased in by him, which they were to have. The land taken in attachment in said suits was the land conveyed to said Joseph E. Snyder by said David E. James and wife by said

deed of April 13th, 1869, not included in said deed to Snyder of date July 27th, 1864, and neither of the plaintiffs in the attachment cases nor said Traber nor Norman ever did or consented to anything that would preclude or stop them from acquiring and holding title to said lands so attached against Judd.

That said Traber made the several conveyances mentioned in said bill of complaint, but the considerations therefor are not correctly stated in said bill.

These defendants deny that at the time of their purchase of the land now owned by said Tourtelott that — had full or any notice whatever of the matters and things in said bill of complaint alleged, except as in this answer is specifically admitted, and deny that they ever falsely or fraudulently set up or pretended to have a title to the land so conveyed to them or that they have ever brought any vexatious suits whatever against the complainants or any of them in ejectment, but they say that they acquire and have always claimed to have and do now have a good title to said land, so conveyed to them by said Traber and said Norman, and that their said action of ejectment is not vexatious.

These defendants deny that said Joseph E. Snyder ever acquiesced in or permitted the said land sale and conveyance by Assignee Ess to Judd to be effected.

These defendants deny that they or either of them are wholly or at all insolvent and deny that no damages or costs can be re-
465 covered against them on execution, and, on the contrary, say that said Traber is himself worth more than the value of all the land in controversy in this case and has property subject to execution out of which could be realized more than ten thousand dollars ($10,000).

These defendants deny that said complainants or either of them or any one under whom they pretend to have or claim title to the lands in controversy in this suit ever have or had prior to July, 1879, any possession whatever of said lands, nor have they or either of them ever had any possession whatever thereof except as they acquired the same as hereinbefore stated in this answer.

Further answering, these defendants say that after said Byron Judd obtained his conveyance from said assignee, Esss, he made a quitclaim deed to Stephen A. Cobb and Allison B. Bartlett dated July 31st, 1872, for the consideration of five hundred dollars ($500); all of said lands covered by said conveyance from said assignee, Ess, to said Byron Judd.

Afterwards said Stephen A. Cobb and complainant Sophia A. Cobb, then his wife and now his widow, and said Allison B. Bartlett and his wife, by warranty deed dated August 15th, 1872, then delivered for the consideration of eight hundred and fifty dollars ($850), conveyed to the Hannibal and St. Joseph Railroad Company the last parcel of land described in said deed by said assignee, Ess, to said Byron Judd, containing two (2) acres, more or less, which was a part of the land conveyed by said David E. James and wife to James F. Joy as hereinbefore stated, and thereby said Cobb and Bartlett, so far as they could, ratified and confirmed said deed of

David E. James and wife to said Joseph E. Snyder dated July 27th, 1864, the land so conveyed to said railroad company being covered by the last-mentioned deed, but not being covered by the deed of David E. James and wife to Joseph E. Snyder dated April 1st, 1869.

After said Stephen A. Cobb and Allison B. Bartlett got the said deed to themselves from said Judd and wife dated July 31st, 1873, they on investigation became satisfied that they did not have any title whatever, legal or equitable, to or in the land in controversy in this case covered by said deed to Snyder of April 13th, 1869, not included in said deed to him dated July 27th, 1864, and they abandoned all claim thereto and all pretense of possession thereof.

They suffered a tax sale certificate to issue against such land on a sale thereof duly made for failure to pay the taxes thereon and had the same held by a third person for their benefit, and after the issue of such certificate they paid one year's taxes on the land to said McAlpine, one of the complainants herein, while he was the county treasurer of said Wyandotte county, but he failed to enter such payment in the proper county books and afterwards said Lafayette Traber, subsequent to the sheriff's deed to him, redeemed the land so conveyed to him by said sheriff's deeds as a part thereof from said tax sale and paid into the treasury of said county the amount necessary therefor according to the records of the county, which, however, did not include anything for the one year's taxes paid as before stated by said Cobb and Bartlett, so that then said Bartlett and the representatives of said Cobb, then deceased, got the redemption money to which they were entitled; they did not receive as much by about ninety dollars ($90.00) as they would have received had said McAlpine performed his duty as such treasurer and entered in the proper county books the fact of the payment of said one year's taxes and the amount thereof, and they thereupon called upon said McAlpine to make good the loss which they had so sustained on account of his neglect of duty, and he thereupon proposed to said Bartlett and said Sophia A. Cobb, the widow of Stephen A. Cobb, who had shortly before that time died, that if said Bartlett and said Sophia A. Cobb would, in her own right and as admin-
466 istratrix of her husband's estate, make a quitclaim deed to him of the lands in controversy in this case to pay such sum so claimed and lost on account of his said neglect of duty, and thereupon said Allison B. Bartlett and Sophia A. Cobb made to said McAlpine a quitclaim deed to said lands so in controversy in this suit in 1879 and received from said McAlpine said sum of ninety dollars ($90.00) or about that and nothing else whatever as the consideration for such conveyance. In this transaction said McAlpine acted under the advice of the complainant Mason, who was, in consideration of an interest in the speculation, to use his legal skill and all the means he could to fortify and strengthen his abandoned claim to the property and also to get these defendants out of the possession of the lands which they had bought in good faith for *and*, as said McAlpine and Mason well knew, and to get said McAlpine and himself into possession thereof.

To accomplish this end said Mason obtained from the heirs of said David E. James, who died about 1872, for a nominal consideration, a quitclaim deed for the lands in controversy, which gave no title whatever, for the reason that said heirs had no right, title, interest, or estate to convey.

Said Mason also procured from one Douglass 1 quitclaim deed of such title as he, said Douglass, had under tax deed to him of five (5) acres of land out of thirty-eight (38) acres, being all of said allotment number fifteen (15) to said David E. James in said partition suit, for the taxes for 1868, which tax deed does not cover any part of the land in controversy in this case and is void for vaguencies in the description of the property covered thereby and for various irregularities in the tax-sale proceedings prior to the issue of the deed.

Said Mason also, in furtherance of the same object, procured from one Richards for a nominal consideration a conveyance to cover land thus described, to wit:

"Four (4) acres described as follows, viz: Commencing at northwest corner of tract conveyed to James F. Joy by D. E. James, south twenty (20) degrees ten (10) minutes east three hundred (300) feet, south sixty-two (62) degrees ten (10) minutes west five hundred and eighty (580) feet, north twenty-three (23) degrees ten (10) minutes west three hundred (300) feet, north sixty (60) degrees ten (10) minutes east five hundred and eighty (580) feet to beginning, excepting two (2) acres off the easterly and fronting on the Missouri river, redeemed February 8th, 1873, by Hannibal and St. Joe Railroad Company."

Which last-mentioned deed does not cover the land in controversy in this case and is void also for want of any notice of the sale of said land for delinquent taxes and for other irregularities in the tax-sale proceedings.

The pretended titles above stated are all the title which the complainants herein have or ever had to the lands in controversy in this case.

The lands in controversy in this case are now of the value of over ten thousand dollars ($10,000) and the complainants herein are seeking, by virtue of the pretended titles above mentioned and of none other, to obtain possession of and hold said lands against these defendants, who have bought in good faith and paid therefor as above stated so much of land as is covered by said deed to these defendants by said Traber and Norman.

These defendants state that these complainants have not now nor never had any claim whatever to the lands in controversy in this case possessing any merit at all, and that if the title to said lands in controversy vested in Joseph E. Snyder was not passed by the sheriff's deeds to said Traber, then the title to said lands remains and
467 is with the heirs-at-law of said Joseph E. Snyder, deceased.

These defendants say that there is no equity whatever, as they are advised by their counsel and believe, in the bill of complaint, and that whatever right to said lands in controversy herein said complainants or any of them aver is strictly legal rights, to be so adjudicated and determined in actions at law.

At the time said complainants acquired each and all of their pretended titles to the lands in controversy they each and all of them knew of all the facts hereinbefore stated as to the title of defendants as to the land they claim and their possession of the land.

Having fully answered, defendants pray to be hence dismissed with their costs and for all proper relief in the premises.

TRABER AND GIBSON,
Attorneys for Defendants Traber and Welland.

STATE OF MISSOURI, }
County of Jackson, } *ss:*

Be it remembered that on the 2nd day of August, 1884, before the undersigned, notary public, personally appeared Lafayette Traber and C. F. Welland, the above-named defendants in the foregoing answer, who, being duly sworn according to law, depose and say that the matters and things set forth in the foregoing answer are true except those matters therein stated to be on information and belief, and as to those they believe them to be true.

LAFAYETTE TRABER.
C. F. WELLAND.

Sworn to before me and subscribed in my presence this 2nd day of August, 1884.

In testimony whereof I have hereunto set my hand and affixed my seal of office this the day and year last above written.

My commission as notary public expires December 7th, 1884.

WILLIAM K. HAWKINS,
[SEAL.] *Notary Public, Jackson County, Missouri.*

468 EXHIBIT "A."

Know all men by these presents that I, David E. James, of the county of Wyandotte and Territory of Kansas, do hereby bind myself and my heirs and assigns to convey unto James Gladden and to his heirs and assigns, by a good and valid deed, one undivided ten (10) acres of the east half (½) of the southwest quarter (¼) of section number eleven (11) and of the east half (½) of the southwest quarter (¼) of section number ten (10), in township number eleven (11), being in the forks of the Kansas and Missouri rivers in the county of Wyandotte, Kansas Territory, and all consisting of one undivided ten (10) acres.

It is hereby covenanted and agreed that the aforesaid conveyance shall be made at any time from one year from the date of this instrument.

It is also understood and agreed that this conveyance is to be made subject to and in accordance with the terms and conditions of a certain mortgage given upon said real estate by said James to one Silas Armstrong, and which is recorded in the office of the proper county of Wyandotte, Kansas Territory.

In witness whereof I have hereunto set my hand and seal this 5th day of March, A. D. 1860.

DAVID E. JAMES. [L. S.]

Know all men by these presents that I, the within-named James Gladden, in consideration of one thousand dollars ($1,000) to me in hand paid by Henry R. Seegar, the receipt whereof I do hereby acknowledge, have bargained, sold, assigned, and set over all my right, title, interest, claim, property, and demands whatsoever in and to the within bond to the said Henry R. Seegar and his assigns forever.

In witness whereof I have hereunto set my hand and seal this 5th day of March, A. D. 1860.

his
JAMES x GLADDEN.
mark.

In the presence of—
LOUIS B. SCOTT.
JOSEPH E. SNYDER.

STATE OF MISSOURI, }
County of Jackson. }

Be it remembered that on this 6th day of March, 1860, before me, the undersigned, John C. Hough, clerk of the Kansas City court of common pleas for Kaw township, in the county and State aforesaid, personally appeared James Gladden, who is well known to me as the person whose name is subscribed to the foregoing instrument of writing, and acknowledged the same to be his voluntary act and deed for the uses and purposes herein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of Kansas, on the day and date above written.

[SEAL.] JOHN C. HOUGH, *Clerk*,
By LOUIS B. SCOTT, *D. C.*

Recorded October 1st, A. D. 1860, at 5 p. m.
V. J. LANE, *Register of Deeds*,
By JAMES A. CRUISE, *D. R.*

469 This indenture made, this 27th day of July in the year of our Lord, one thousand eight hundred and sixty-four between David E. James and Jennie M. James his wife, of the first part, and Joseph E. Snyder of the second part witnesseth: That the said party of the first part for and in consideration of the sum of one dollar to him in hand paid by the said party of the second part the receipt of which is hereby confessed and acknowledged has granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do grant, bargain, sell, remise, and release, alien and confirm unto the said party of the second part his heirs and assigns forever;

Commencing at a point twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25) in the county of Wyandotte and State of Kansas; thence south sixty-one and one-half (61½) degrees west six hundred

and forty (640) feet and two (2) inches; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east eight hundred and seventy-one (871) feet and two (2) inches; thence along the south-west bank of the Missouri river north twenty-eight and one-half (28½) degrees west three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the place of beginning containing six (6) acres. Together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion, and reversions, remainder, remainders, rents, issues and profits thereof and all and — the estate, right, title, and interest and demand whatsoever of the said party of the first part either in law or in equity of, in and to the above-bargained premises with the hereditaments and appurtenances to have and to hold the said premises as above described with the appurtenances unto the said party of the second part, and to heirs and assigns forever.

In witness whereof the party of the first part has hereunto set hand and seal the day and year first above written.

D. F. JAMES. [SEAL.]
JENNIE M. JAMES. [SEAL.]

Sealed and delivered in the presence of—
F. L. PARKER,
TRACEY E. ROOT.

STATE OF MICHIGAN, } ss:
Washtenaw County, }

On this 2nd day of August, 1864, before me, the subscriber, clerk of the circuit court of the county of Washtenaw aforesaid, personally appeared David E. James and Jennie M. James, to me personally known to be the identical persons described in and who executed the within conveyance, and acknowledged the instrument to be their voluntary act and deed; and the said Jennie M. James, on an examination apart from her husband, having first been made acquainted with the contents of such conveyance, acknowledged that she executed the same and relinquished her dower in the real estate therein mentioned without any fear or compulsion of her said husband.

TRACY W. ROOT, *Clerk.* [SEAL.]

[Revenue stamp.]

470 Said defendants, further answering, say that said Traber never conveyed any part of the land in controversy in this case to Peter Boyle, but did convey forty (40) by two hundred and eighty-nine (289) feet of said land to the wife of M. D. Trefern, one of the attaching creditors in the suits against Joseph E. Snyder, and is informed and believes that said Trefern sold and conveyed the same to Peter Boyle.

Said defendants say that said Norman has no interest whatever

in any of the lands in controversy, nor has he had since the date of the sale so made by said Traber and Norman to said Tourtelott and Allcutt.

Said defendants for further answer say that when said Traber conveyed to Seegar, Tobener, and Trefern that he had no further interest whatever in any of the property so conveyed, nor had they nor any of them any interest in the land retained by said Traber, to them by him.

That he conveyed said Welland's portion of said property to said Tobener at the instance and request of said Welland, and that said Tobener held the same in trust for said Welland until he conveyed the same to him, on the — day of ——, 18—.

Said defendants here now answering say that one Peter W. Ditsch, one of the attaching creditors against said Snyder, was entitled to a portion of the land so conveyed to said Traber by said sheriff, which portion was a part of the same tract sold by said Traber and Norman to said Tourtelott and Allcutt, and the reason why the said Traber did not convey the same to said Ditsch was because said Traber had bought said interest from said Ditsch and paid him therefor.

Endorsed: No. 4668. Nicholas McAlpine, James M. Mason, *et al. vs.* Teresa Snyder *et al.* Joint answer of Lafayette Traber and C. F. Welland. Filed Aug. 4th, 1884. A. S. Thomas, clerk, by Frank J. Thomas, deputy.

Court here adjourned until Tuesday, the 29th day of June, 1880, at ten o'clock a. m.

Mr. MASON: We now offer the depositions taken in the case in which McAlpine was plaintiff *vs.* Tourtelott *et al.*, taken under proceedings in the United States circuit court for the district of Kansas and in the same case in which the bill and answers which we have introduced were filed.

The depositions refer to the same land, the same questions, and the same issues, and are substantially between the same parties.

The COURT: What do these depositions prove?

Mr. MASON: The matters and things which they prove are these: First, they tend to show that defendants' grantor by a tenant was in actual and visible possession of these lands; that they occupied the same at the time the attachment suit under which plaintiffs claim was commenced and at the time that attempt was made to serve the orders of attachmend, and that in connection with the fact that the return of the orders of attachment shows no statement that copies of the orders of attachment were posted upon the premises and shows no statement of the fact of valid service leads me to the conclusion that these depositions in that record are vital to our case.

That brings up the question of the competency of the return or the competency of the attachment service, when the return does not show that a copy of the order of attachment was either posted upon the premises or that a copy was served on the occupant.

Another question which this evidence tends to prove, and
471 we think does prove, is that this property which was sold in the bankrupt court in 1871 was sold as the record shows, and it was properly sold and was in fact a bankrupt sale.

The gentlemen pretend to make the point that it was not a bankrupt sale, and make it for the reason and on the ground that the property did not go into the bankrupt court until after the petition was filed.

That is their ground. This evidence which we wish to introduce shows conclusively that that property stood in Snyder, the bankrupt, and was only changed in form at that time, and that it stood in Snyder as early as 1860, and the records and the evidence together corroborate each other and show an equitable title in Snyder to the lands in controversy long prior to the time when the petition in bankruptcy was filed.

That is the purpose of introducing this testimony—to show that in fact and in right and in the true merit of the case that we have a good title to the property, because when the property was sold it was property of the bankrupt. Of course, if that property accrued to him wholly after the petition was filed I do not contest the point, but we have authorities here to show that through whatever forms the property may pass, if it take its rise—that is, if it takes its source, if its fountain head and existence in any form was in Snyder prior to the bankruptcy, if he had an equitable estate in contradistinction to a legal interest, and if that equitable interest finally became clothed with a legal interest, and if that legal interest was put on as a garment after the petition was filed—the creditors yet reached back and took all the property of the bankrupt, both equitable and legal, at the time the petition was filed.

That is our position upon the question, and these depositions show all that matter.

This point as to the invalidity of the sheriff's title, which they claim under, depends and hangs in a measure upon this verbal testimony which we seek to introduce.

Judge DAY: No; not entirely.

Or it may be at least that it shows a meritorious case.

Mr. MASON: Judge Day says, "Not entirely," and that may be.

Gen. BLAIR: We object to the introduction of this testimony as wholly incompetent from beginning to end.

The court sustained the objection; to which ruling of the court defendants at the time excepted.

Mr. MASON: I will offer the different depositions as I desire, and your honor can rule as against them when offered, and we will save the questions.

The COURT: Yes, sir; offer the depositions as you wish.

Mr. MASON: "We will now offer the deposition of J. B. Garrett, page 1 to page 8 of deposition record."

Objected to by counsel for plaintiffs because incompetent, irrelevant, and immaterial.

The court sustained the objection; to which ruling of the court the defendants at the time excepted.

The deposition was in words and figures as follows, to wit:

Sec. 328, Code.

472 In the Circuit Court of the United States within and for the State of Kansas.

N. McALPINE *et al.* *vs.* G. W. TOURTELOTT *et al.* } No. 4668.

Be it remembered that pursuant to an order of said court hereby referred to and made a part hereof of this certificate, upon due notice given of the time and place of the examination of witnesses on the behalf of complainants in said cause—

Said notice given is hereby attached and made a part of this certificate—

And upon the issue of subpœnas for the following witnesses, to wit, James M. Mason, N. McAlpine, J. B. Scroggs, Mrs. Cornelia Street, Mrs. Sophia Cobb, J. B. Garnette, W. M. Glenn, Geo. Allcutt, J. P. Campbell, Dr. Geo. B. Wood, Benj. Scherline, Wm. H. Bridgens, at the time and place stated in said notice, to wit, October 15th, 1884—

The parties appeared at the office of J. M. Mason, in Wyandotte county, Kansas. Complainants appeared by their attorney, J. M. Mason, and respondents by Brumback and Ferry, Goodin and Keplinger, and Byron Sherry and Lafayette Traber on such part of respondents as the pleadings showed; that said last-mentioned attorney appeared in said cause; I proceeded to examine said witnesses, allowing counsel to examine and cross-examine by questions and answers; that said examination was so conducted on the 15, 16, 17, 21, and 31 days of October, 1884, and completed on the 31st day of October and the first day of November, 1884—

Orders of adjournment being made by me on each day and to the respective days above set forth; that the examination of the witness- was reduced to writing by me and was signed by them in my presence on the 31st day of October and the 1st day of November, 1884, in the order and in the form as the testimony set forth, to which this certificate is hereby attached, each of said witnesses being first duly sworn in accordance to law, as set forth in the report of the testimony hereby returned.

Each of said witnesses claimed pay for their attendance, and a part of them were paid, as set forth in an affidavit herewith attached and returned and made a part of this certificate, on the 31st day of October and November 1st, 1884.

All the parties were present except Mr. Traber, who was duly notified and given an opportunity to be present, and the testimony theretofore written was read over to the respective witnesses and signed by them with the exception of J. T. Campbell, who refused to sign, and I therefore signed his testimony for him.

The following is a statement of the costs attending the taking of this testimony pursuant to said order above referred to:

To 5½ days stenographer reporting at $6.00 *per diem and*	$33 00
To original and furnishing the office copy for the use of complainants, 750 words to a page, 114 pages, 8,500 words to copy, at 20 cents per 100 words	$171 00
Aggregate total	$214 00
For testimony on re-examination on the 31st day of October, 1884, 3,000 words, at 20 hhd.	6 00
Grand total	$220 00

Witness my hand this 3rd day of November, 1884.

S. W. BLODGETT, *Examiner.*

473 In the Circuit Court of the United States for the District of Kansas.

NICHOLAS MCALPINE and JAMES M. MASON and SOPHIA A. COBB, Complainants,
against
GEORGE W. TOURTELOTT, GEORGE P. ALLCUTT, LAFAYETTE TRABER, Jos. L. Norman, C. F. Welland; also Frank Boyle, Widow Mary Boyle, and Alexander Boyle, Jessie Boyle, and Dasie Boyle, Minors and Heirs-at-Law of Peter Boyle, Deceased; also Teresa Snyder, James D. Snyder, Eugene Snyder, Fred. Snyder, and Caspar Snyder, Heirs-at-Law of Joseph E. Snyder, Respondents.

And now, on this 14th day of October, 1885, at an adjourned term of said court, sitting at Leavenworth, Kansas, came on to be heard the motion of complainants for the appointment of Samuel B. Blodgedd and Morris E. Jones as special examiner- to take the testimony in above-entitled cause; and it appearing to the court that due notice of this application has been served upon the attorneys for the respondent-, it is hereby ordered that said Samuel W. Blodgedd be, and is hereby, appointed special examiner to take the said testimony, and that Morris E. Jones is hereby appointed special examiner to take said testimony, and that either of said appointees be authorized and empowered to take any or all the testimony in this cause, independent of each other, whenever the parties respectively shall cause to be brought before either of them the witnesses from the said parties they may elect to have examined, and it is further ordered that said complainants have ninety (90) days from the date of this order in which to take their testimony-in-chief, and that the respondents have ninety (90) days thereafter in which to take their testimony in answer thereto, and that the complainants have thirty (30) days thereafter within which to take testimony in replication thereto, and that the said examiners make the return to said testimony as provided by law to this court.

C. G. FOSTER, *Judge.*

Endorsed: No. 4668. Filed October 14th, 1884. A. S. Thomas, clerk.

UNITED STATES OF AMERICA, *District of Kansas,* } ss:

I, A. S. Thomas, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify *that* the foregoing to be a truthful and correct copy of an order of said court from the order and papers thereof in the suit of McAlpine *et al. vs.* Teresa Snyder *et al.*, No. 4668 in said court.

In testimony hereof I have hereunto set my hand and affixed the seal of said court, at my office, in Topeka, in said district of Kansas, this 15th day of October, A. D. 1884.

A. S. THOMAS, *Clerk.* [SEAL.]

474 UNITED STATES OF AMERICA, *District of Kansas,* } ss:

The United States of America to William Glenn, Greeting:

You are hereby commanded that, laying aside all business and excuses, you be and appear in your proper persons before the examiner of the circuit court of the United States of America, Samuel W. Blodgedd, in and for the district of Kansas, to be held before the judges of said court, at the office of James M. Mason, in said district, forthwith, 1st day of November, 1884, at — immediately, to testify in behalf of complainants all and singular these things which you know in a certain cause now pending in the said court wherein Nicholas McAlpine *et al.* are plaintiffs and George W. Tourtelotte *et al.* are defendants; and this you will in nowise omit under the penalty of the law upon you.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Topeka, Kansas, in said district, this 1st day of November, 1884.

[SEAL.] A. S. THOMAS, *Clerk.*

Marshal's Return.

STATE OF KANSAS, *County of Wyandotte,* } ss:

J. B. Garrett, being duly sworn, deposes and says that he served this subpœna on the within William Glenn on the 1st day of November, 1884, by reading the same to him. This said subpœna was served by officer this day.

J. B. GARRATT.

Subscribed and sworn to before me this 1st day of November, 1884.

JOHN S. COX,
Notary Public.

My commission expires April 5th, 1887.

UNITED STATES OF AMERICA, *District of Kansas*, } ss:

The United States of America to Brigham Schurele, county treasurer of Wyandotte county; J. S. Campbell, and William M. Glenn, George Altop:

You, Brigham Schnirole, are hereby commanded that, laying aside all business and excuses, you be and appear in your proper person before the circuit court of the United States for the district of Kansas, to be held before Samuel W. Blodgett, special examiner of the said court, at the office of James M. Mason, corner of Fifth street and Minnesota avenue, Wyandotte City, Kansas, in said district, on the 15th day of October, A. D. 1884, forthwith, at 1 o'clock — m., to testify on behalf of the complainants all and singular these things which you know in a certain cause now depending in the said court wherein Nicholas McAlpine *et al.* are plaintiff- and Teresa Snyder *et al.* are defendants.

And said Schurele bring with him the certain bond and affidavit upon which E. L. Bartlett and Mrs. Cobb drew certain tax-redemption money paid in by one Lafayette Traber *et al.*, and also the receipt book by said Bartlett and Cobb parties, showing the date of that transaction; also tax-roll and tax-sale book for the years ——, showing the sale transaction for taxes to Frank H. Cobb and taxes as entered in the tax-roll for that year.

And said witnesses, J. S. Campbell and William M. Glenn, are commanded to appear in obedience to these subpœnaes on the 21st day of October at 2 p. m.

And this you will in nowise omit under the penalty of the law upon you.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Topeka, Kansas, in said district, this 15th day of October, 1884.

475 [SEAL.] A. S. THOMAS, *Clerk.*

Endorsed.

STATE OF KANSAS, *County of Wyandotte*, } ss:

J. B. Garrett, being duly sworn, deposes and says that he received this subpœna on the 16th day of October, 1884, and on the same day served the same on Benjamin Schenerle and on the next day upon the witness George Altop by reading the same to each of said witnesses.

J. B. GARRETT.

Subscribed and sworn to before me this 1st day of November, 1884.

My commission expires April 5th, 1887.

JOHN S. COX, [SEAL.]
Notary Public.

STATE OF KANSAS, }
County of Wyandotte, } *ss:*

Nicholas McAlpine, of lawful age, being duly sworn, deposes and says that he paid the witnesses for attendance and mileage of witnesses in the taking of the testimony before Samuel W. Blodgett, examiner in case of McAlpine *vs.* Tourtelott *et al.*, 4668—

To William Glenn, 2 days and mileage	$3 50
To J. S. Campbell, 2 days and mileage	4 00
To George Altop, 2 days and mileage	3 50
To Mrs. Cornelia Street, 2 days	3 00
" J. B. Garrett, 2 days and mileage	3 50
To Geo. B. Wood, 2 days	3 00
Am't	20 00

There still remains taxed as costs for same—

To J. B. Garrett for serving subpœnaes and mileage	$2 50
Carrying four records from register of deeds office	25
To John B. Scroggs, 1 day	1 50
Sophia Cobb, 2 days and mileage	5 00
N. McAlpine, 2 days	3 00
To James M. Mason, 2 days	3 00
Notary's fees for taking oaths	2 00
Benj. Schemerile, 2 days	3 00
Copies of records, Exhibits A, B, & C	1 50
	21 75
Original total	$42 25
W. H. Bridges, reg. of deeds, 1 day	1 50
Total	$43 75

N. McALPINE.

Subscribed and sworn to before me this 1st day of November, 1884.

My commission expires April 5th, 1887.

[SEAL.] JOHN S. COX,
Notary Public.

In the Circuit Court of the United States for the District of Kansas.

NICHOLAS MCALPINE *et al.*, Plaintiffs,
vs.
GEORGE W. TOURTELOTT *et al.* and TERESA SNYDER *et al.*, Defendants.

Notice to Take Depositions.

To all of the defendants in the above-entitled cause or their attorneys of record:

You are hereby notified that the testimony of all the witnesses heretofore examined in this cause and other witnesses to be used in evidence on the trial of above-entitled action in behalf of the complainants will be taken and completed at the office of James
476 M. Mason, at the city of Wyandotte, Kansas, at ten (10) o'clock a. m., before Samuel W. Blodgett, special examiner of said court, pursuant to a continuance of said examination in the county of Wyandotte and State of Kansas on Friday, the 31st day of October, 1884, between the hours of eight (8) o'clock a. m. and six o'clock p. m., and that the taking of the same will be adjourned from day to day between the same hours until said depositions are completed.

JAMES M. MASON,
Attorney for Complainants.

Service of the above notice hereby acknowledged this 28th day of October, 1884.

BYRON SHERRY AND
GOODIN AND KEPLINGER,
Attorneys for the Snyders.

In the Circuit Court of the United States for the District of Kansas.

NICHOLAS MCALPINE and JAMES M. MASON and SOPHIA A. COBB, Complainants,
vs.
GEORGE W. TOURTELOTT, GEORGE P. ALLCUTT, LAFAYETTE Traber, Joseph L. Norman, C. F. Welland, Frank Boyle, Mary Boyle, Alexander Boyle, Jesse Boyle, and Daisey Boyle, Teresa Snyder, James D. Snyder, Eugene Snyder, Fred. Snyder, and Caspar Snyder, Respondents.

To the above-named respondents and their attorneys of record and their guardian *ad litem:*

You are hereby notified that the depositions of Dr. Geo. B. Wood, Sophia A. Cobb, Cynthia Long, Cornelia Street, N. McAlpine, and other witnesses to be used as evidence before the trial of the above-entitled action on behalf of the complainants will be taken at the office of James M. Mason, corner of 5th street and Minnesota avenue, Wyandotte, before Samuel W. Blodgett, examiner, in the county of Wyandotte and the State of Kansas, on Wednesday, the 15th day of October, 1884, between the hours of eight o'clock a. m.

and six o'clock p. m., and that the taking of the same will be adjourned from day to day, between the same hours, until the taking thereof is fully completed; that the plaintiffs desire the evidence to be adduced in the cause to be taken orally.

JAMES M. MASON,
Solicitor for Complainants.

Service of the above notice is hereby acknowledged this 10th day of October, 1884.

BYRON SHERRY AND
GOODIN AND KEPPLINGER,
Attorneys for the Snyders, Defendants.

UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

The United States of America to Cynthia Long, George Altop, and —— Altop, his wife Enos Long, J. B. Scroggs, Greeting:

You and each of you are hereby commanded that, laying aside all business and excuses, you immediately be and appear in your proper persons before Samuel W. Blodgett, special examiner of the circuit court of the United States of America in and for the district of Kansas, to be held before said examiner at Wyandotte, in said district, on the 16th day of October, 1884, immediately and forthwith, to testify on behalf of the plaintiffs all and singular these things which you know in a cer- action or cause now depending in the said court wherein Nicholas McAlpine *et al.* are plaintiffs and Teresa Snyder *et al.* are defendants; and this you will in nowise omit under the penalty of the law upon you.

477 Witness the Hon. Morrison R. Waite, Chief Justice of the United States of America, in said district, this 16th day of October, 1884.

A. S. THOMAS, *Clerk.* [SEAL.]

Marshall's Return.

Oct. 16th, A. D. 1884, rec'd this writ.

Oct. 16th, 1884, served this subpœna by reading the same to the within-named John B. Scroggs.

The within Cynthia Long, George Altop, —— Altop, his wife, and Enos Long not found.

B. F. SIMPSON, *Marshall,*
By O. K. SOWERS, *Deputy.*

Fees: Service, .50.

UNITED STATES OF AMERICA, *District of Kansas,* } *ss:*

The United States of America to Dr. George B. Wood, Greeting:

You are hereby commanded that, laying aside all business and excuses, you, George B. Wood, be and appear in your proper person before the special examiner, S. W. Blodgett, of the United States of

America in and for the district of Kansas, to be held before the said examiner at the office of J. M. Mason, in said district, on the 20th day of October, 1884, at 10 o'clock a. m., to testify on behalf of the complainants all and singular these things which you may know in a certain cause now depending in said court wherein Nicholas McAlpine is plaintiff and Geo. W. Tourtelett *et al. is* defendants; and this you will in nowise omit under the penalty of the law upon you.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, in said district, this 17th day of October, 1884.

A. S. THOMAS, *Clerk.* [SEAL.]

Marshall's Return.

October 17th, A. D. 1884, rec'd this writ.

Served this subpœna on the within-named Dr. Geo. B. Wood by reading the same to him this the 18th day of October, A. D. 1884.

B. F. SIMPSON, *Marshall,*
By O. K. SERVICE, *Deputy.*

Fees: Service, .50.

478 In the Circuit Court of the United States in and for the District of Kansas.

NICHOLAS MCALPINE and JAMES M. MASON and SOPHIA A. COBB, Complainants,
against
GEORGE W. TOURTELOTT and GEORGE P. ALLCUTT, M. LAFAYETTE Traber, Joseph Norman, C. F. Welland; also Frank Boyle, Mary Boyle, and Alexandria Boyle, Jessie Boyle, and Daisey Boyle, Minor Heirs-at-Law of Peter Boyle, Deceased; Teresa Snyder, Fred. Snyder, and Casper Snyder, James D. Snyder, and Eugene Snyder, Minor Heirs of Joseph E. Snyder, Deceased, Respondents.

Transcript of the Testimony Taken Before S. W. Blodgett, Examiner.

J. B. GARRETT, being called as a witness on the part of the complainants and being duly sworn, testified as follows:

J. B. Garrett.

Q. State your name, age, residence, and place of occupation.

A. J. B. Garrett; reside in Wyandotte city, Kansas; my occupation, rental collecting agent for the McAlpine and James M. Mason. I do a general renting collecting for them.

Q. State if you know the *place* of ground marked on the plat of Kansas City, Kansas, to Joseph E. Snyder of about four (4) acres.

A. Yes, sir.

Q. Who is in possession of that land at the present time? State the condition of the land just as you know it.

A. The land that I collect the rents off from is supposed to be two acres of the west end of a four-acre tract—the west half of it.

Q. What houses and fence are now upon that ground?

A. Well, there is on that portion—that portion is fences with a post and wire fence.

Q. You mean the westerly division?

A. Yes, sir.

Q. About where would the east line of what you would call the two acres run—about how many feet eastwardly of the east line of Wood street, as you have noticed it?

A. Yes, sir; I suppose fifty-four (54) feet east of Wood street extended.

Q. The south line is bounded by what? How is the southerly line situated?

A. The southerly line is bounded by an alley running east and west.

Q. Is there a string of fence running along there?

A. Yes, sir; a string of post and wire fence.

Q. What is on the westwardly boundary?

A. Al. Fowler's row. It's fenced in by houses and cooper shop.

Q. What erections is there on the northwardly boundary?

A. Well, there is Fowler's lard-house.

Q. Is there any fence along there?

A. Yes. A portion of it is bounded by a fence.

Q. All except the lard-house?

A. Yes, sir.

Q. Well, is that two acres entirely enclosed?

A. Well, there is some space there, I suppose, on the east line of the two acres, up by Fowler's lard-house *by Fowler's lard-house*, that is not fenced.

Q. How many feet?

A. Fifty (50) feet, about.

Q. Is there a fence there?

A. Not since I had the management of it.

479 Q. Further than that it is enclosed, is it?

A. Yes, sir.

Q. State what houses are on the plat of ground that you have been speaking of, and while in that connection go on and tell what the buildings are and who occupied by—who are the tenants of them; just go on and tell all that you know about the land; go on and state the facts as to the present status of the land.

A. Mrs. Alice Weak is one renter.

Q. Who from?

A. Messrs. McAlpine and Mason.

Q. What has she got on there?

A. She has got a house on there.

Q. Who next?

A. The next is Patrick Murphy.

Q. What has he on there?

A. He has a house on there.

Q. Does he live on there?

A. He lives on there; yes, sir.

Q. Does he live on the ground at this time?

A. Not in that house; he lives on the ground, though, but not in this house. He sold that and bought another; that is on the same ground as the other.

Q. Whose tenant is he, in the house that he new occupies at the present time?

A. McAlpine and Mason.

Q. Well, go on.

A. Then there is one James Porter.

Q. What does he occupy?

A. A house rented to them.

Q. Well, whose house?

A. It belongs to McAlpine and Mason.

Q. On which side of the street as you go along towards Kansas City, Missouri?

A. That is on the east side of Wood street extended. Mrs. Week's house is on the west side.

Q. Well, go ahead.

A. The next is Mrs. Mary Mitchell.

Q. What does she occupy?

A. She occupies the house.

Q. Whose house does she occupy?

A. McAlpine and Mason.

Q. Go on.

A. The next is Alfred Wolsey.

Q. What has he got on there?

A. Well, there is another one before that. I will take them along in rotation; the next is Wily Leslie and the next is Alfred Wolsey. That house belongs to Mr. McAlpine that Woolsey lives in.

Q. Has he got an enclosure around his house?

A. Yes, sir; it is enclosed; there is a fence around it.

Q. Well, now, is there another house on the same side?

A. Yes, sir; another one occupied by Pat. Murphy; one he bought since, formerly owned by Thornton Huff.

Q. Whose tenant is Thornton Huff?

A. McAlpine and Mason's.

Q. Who bought out Murphy's house?

—. Those parties, I don't know their names; they are colored people. I have not got their names; they only moved in there last week.

480 Q. They bought Murphy out?

A. Yes, sir.

Q. Whose tenant was Murphy?

A. Murphy was McAlpine and Mason's tenants. I have been collecting rent from them.

Q. Now, there are some more on the other side of the street that you have not mentioned.

A. Abram Thomas is one, and then there is the Pleasant Green Baptist church. I collect the rents from that.

Q. Go ahead.

A. The next is Abraham Thomas. Abraham Thomas owns the house.
Q. Who does he rent of?
A. He rents of McAlpine and Mason.
Q. Go ahead.
A. Well, the next is Mrs. Lockeridge; she owns the house.
Q. Who does she pay rent to?
A. She pays rent to McAlpine and Mason.
Q. Who next?
A. The next is Harrington; on the west side of Wood street.
Q. Go on with the next.
A. The next is John Harrington.
Q. Who does those two Harringtons pay rent to?
A. They pay rent to McAlpine and Mason.
Q. How many houses are there of that class belonging to McAlpine and Mason or to their tenants?
A. There are fourteen (14) on there. There is another one lately put up that belongs to Mrs. Johnson, I think.
Q. Whose tenant is Mrs. Johnson?
A. McAlpine and Mason.
Q. Does that include the church—fourteen (14)?
A. Yes, sir.
Q. How many of those houses exclusively belongs to McAlpine and Mason and how many belong to the tenants of McAlpine and Mason?
A. Three (3) of the houses belong to McAlpine and Mason.
Q. Where are they situated?
A. They are on the east side of Wood street extended.
Q. Well, now, who built the fence that you have been speaking of when you first commenced your testimony, by which that two acres is inclosed?
A. Mrs. Mason and McAlpine.
Q. Do you know when it was built?
A. I do not.
Q. It was built before you came there?
A. Yes, sir.
Q. How long have you been collecting rents there?
A. I have been in there since February.
Q. What year?
A. 1884.
Q. I will get you to state what other houses there are other than the houses that don't belong *to* either to McAlpine or Mason or their tenants on the land.
A. There is one house that I know of that was put there by other parties.
Q. Who is that?
A. Mrs. Snyder.
Q. Do you know how she got in there?
A. No, sir.
Q. State how her house is situated—on what of the land—
481 or, in other words, where it is.

A. On the west side of Wood street extended.

Q. How far from the alley on the south line of this land?

A. Well, there is a small, narrow lot there, the width of her house, that extends out and runs south to the alley.

Q. Is her house enclosed by a fence?

A. Yes, sir; her house is enclosed by a fence.

Q. What kind of a fence?

A. It is plank fence.

Q. A post and wire fence, is it not?

A. No, sir; I think it is a board fence.

Q. How far is it across lot where her house inclosed there?

A. Some twenty (20) feet.

Q. How long is it?

A. I should judge it was fifty (50) to seventy-five (75) feet.

Q. That is the house or the ground?

A. That is the ground that is fenced off to Mrs. Snyder.

Q. Is there a gate to it opening on an alley?

A. Yes, sir; there is a gate opening out into the alley on the south end of the lot fenced in.

Q. Well, is there not another house surrounded by a picket fence?

A. Yes, sir; there is.

Q. What house is that?

A. I don't know the lady's name. I never had any dealings with her. The house is on the southeast corner or near the southeast corner—not exactly on the corner. There is a space of something near twenty (20) feet between her house and the alley.

Q. Do you know who claims to be the owner of that house? The possessor or landlord of that house?

A. No, sir; I do not.

Q. Then there are two houses on the lands that you do not collect rents of from?

A. Yes, sir.

Q. The rest of them you do?

A. Yes; the rest of them I collect rent of.

Q. About how much rent per month do you collect from that property?

A. I don't know; I never made an estimate of it.

Q. About how much is due per month? I don't care about you being exact. About how much—figure it up quick?

A. There are three (3) houses at eight dollars and fifty cents ($8.50) a month, and two (2) of them at three dollars ($3.00) each, and there is one brings two dollars and fifty cents ($2.50) and the others at one dollar ($1.00) per month ground rent; except the Pleasant Green church, that is $—; and Woolsey's, that is two dollars ($2.00).

Q. Well, now, who do these parties you mention in connection with McAlpine and Mason—who do they pay rent to?

A. They pay rent to me.

Q. As what?

A. As agent, collecting agent from McAlpine and Mason.

Q. Does Mrs. Snyder pay rent to you?

A. No, sir; I never asked her for it. Her name is not on my list.
Q. Well, how much ground has she got possession of there?
A. I don't know exactly.
Q. Well, state its length and width.
A. I suppose from fifty (50) to seventy-five (75) feet in length and twenty (20) feet in width.
Q. Is that all the ground she has got possession of?
482 A. Yes, sir; that is all that I know of.
Q. Is that all the ground that she exercises any control of?
A. Yes, sir.
Q. Do you know how she comes to be in possession of that?
A. No, sir.
Q. Do you know anything about a lease or right of way over that land?
A. No, sir; I know nothing about that right of way.
Q. Do you know whether Fowler and Company have rented any proportion of that ground for any purpose?
A. I know that he drives stock across there.
Q. You don't know whether it is leased to him or not?
A. No, sir; I do not; that he drives stock across there is all that I know anything about.
Q. Let me ask you whether or not Mrs. Snyder comes over onto that land and interferes with you when you come to collect rent.
A. No, sir; she does not.
Q. How often do you go down there to that ground to collect rent and for other purposes connected with your agency?
A. I go sometimes two and three times a week.
Q. You average how many times a week?
A. I average once a week.
Q. Has anybody interrupted you in your leasing?
A. No, sir.

Cross-examination on behalf of Mrs. Snyder by Judge GOODING, of counsel:

Q. I believe, Mr. Garrett, I understand from your testimony and I am so led to infer, but I wish to ask you particularly whether or not Mrs. Snyder has ever paid you any rent.
A. No, sir; she has not.
Q. And I understand you to say that you have never called upon her for any rent?
A. No, sir; and there is another house.
Q. Now, you have described the grounds which enclosed this house for Mrs. Snyder as a piece of ground twenty (20) feet in width and fifty (50) to seventy-five (75) feet in length?
A. Yes; as near as I can guess at it.
Q. You also state that she did not in any manner interfere with you in your collecting rents. State, now, whether the claim of Mrs. Snyder extends beyond the ground actually enclosed, if you know. You testified that she never interfered with you in your collecting of rents. Now, what I want to know now is, is it not a fact that she claimed the entire two-acres tract of ground?

A. Not to my knowing. She never told me that she did.

Q. Your knowledge of the condition of this ground and the tenancies there only extended back to February, 1884?

A. Yes, sir.

Q. You had nothing to do with it prior to that time?

A. No, sir.

Q. Had you been living in that vicinity prior to that?

A. No, sir; I had been living in Wyandotte city nearly twenty (20) years, except when I was away in Missouri for awhile; but I always considered this my home, and have been here nearly twenty (20) years.

Q. This ground you have been speaking of, this two (2) acres, the half ($\frac{1}{2}$) of this four (4) acres tract, the two acres to which your attention has been called, is that laid off into lots?

A. No; each one has the ground adjoining their house—that is, all but one house. I collect rent from that is enclosed. That one Mr. Woolsey lives in. That is on the east side, the second
483 house from Fowler's lard-house.

Q. There is a fence which partially encloses this two-acres tract; it does not go clear around?

A. Yes; right next to the lard-house on the north end; yes; next to the east line.

Q. Well, is there any break in it at all—that is, that is not inclosed?

A. Yes, sir.

Q. Well, is it enclosed with a fence all around?

A. Yes; with the exception of where these houses are, then there is a gate over next to Fowler's row.

Q. What I want to get at is whether the ground is so enclosed or is so you can go in and out without tearing down gates; whether a person can get ingress and egress?

A. It is open where Fowler drives his stock through; that is open all the time.

Q. Where Fowler drives his stock through, does that open into the entire two acres?

A. Except one piece that is in the southeast corner where this party lives; that I don't collect any rent from; that is enclosed.

Q. Then within this part of the inclosure there are three (3) houses enclosed?

A. The Tourtelott house on the southeast corner and the Woolsey's house the second one from the lard-house.

Q. You are not able to describe this ground by metes and bounds?

A. No, sir; only the way it is enclosed.

Q. You don't know on what section or quarter section it is?

A. No, sir.

Q. Nor the township or range?

A. No, sir.

Q. It has not been platted as any part of a town site, as I understand you—this two (2) acres?

A. No, sir; I think not; not to my knowledge.

Q. The leases to these individuals for ground rent are the pieces

described as lots or by metes and bounds, or how do you designate them? And they have the ground the house is on; do they have any more? So some of them have more ground than their house is on, don't they?

A. Woolsey tends a garden spot, that is all, and that is the only garden spot that is tended in the whole two (2) acres.

Q. How did you describe that Woolsey's piece?

A. That land he gave one dollar a month for, and the ground is fenced where his house is.

Q. That is true; where it is fenced; now, what I want to know is how it is as to the man who had not got a fence?

A. Those parties rent the ground where the house sits and have the use of the ground where the house sits.

Q. That is all right, but doesn't the man get any use of the ground other than where the house sits?

A. There is no particular ground specified.

Q. Outside of Woolsey's no one has any ground except that which the house sits on?

A. No, sir.

Q. What is the probable area or extent of the ground actually covered by houses upon that land, upon that ground from which you have been collecting rent, and the Woolsey ground?

A. I cannot state the——

Q. Well, the probable extent?

A. The ground the house occupied; then they have the ground for outhouses and water-closets.

484 Q. I understood you to say that in your leases you designated the ground the house is on other than the Woolsey's lease.

A. I have never written any leases out myself.

Q. There are no written leases?

A. Not to my knowledge; I have only rented the houses belonging to McAlpine and Mason. They simply rent their houses at so much per month and the others I collect the ground rent.

Q. Then you are the collector and not the rentor?

A. I rent the houses; that is all—that is, I collect the rents off from those who own the houses.

Q. You haven't anything to do with the leasing of the ground?

A. No, sir; I have not leased any.

Q. Well, is it not a fact that the large portion or a greater portion of this two acres is not occupied by the houses at all, and the houses are only on a small portion of the ground and the balance of the ground is not leased to anybody?

A. Yes, sir; not occupied by houses.

Q. State whether there is not more ground that is not occupied under lease than ground which is occupied and leased to, or, in other words, does the leased grounds and the houses of the land occupy one-half of the land?

A. Well, I think it does, or near that; hardly half (½).

Q. And those houses are on the east side of the tract, are they; that would be on the east part the houses are on?

A. There is a portion on the east part and a portion on the west.
Q. Scattered over it?
A. Yes, sir.
Q. Are you personally acquainted with Mrs. Snyder?
A. Yes, sir.
Q. Mr. Mason asked you the question if you know anything about her possession and the manner in which she was holding there. Have you talked with her about her possession and claims there?
A. No, sir.
Q. You never talked anything about her possession there with her?
A. No, sir.
Q. As a matter of fact, don't you know that the woman is claiming more than the little ground where she lives?
A. I don't of my own knowledge.

Redirect examination:

Q. With reference to those tenants, is it not a fact that *and* all those tenants of McAlpine and Mason has common use of the land not immediately occupied by their houses on that two acres?
A. Yes, sir; they appear to have.
Q. Now, you want to speak about another house; what house is that?
A. That is the Urkhart house; I forget the name.
Q. Well, who collects the rent on that?
A. I do.
Q. Who is the person occupying that house; who is the tenant?
A. I don't know the tenant.
Q. Who does he hold under?
A. He holds under a man by the name of Stephens.
Q. Who does Stephens hold under?
A. I don't know who he holds under any more than I collect rent for.
Q. Who do you collect rent for?
A. I collect rent for McAlpine and Mason.
Q. Is that house fenced in?
A. Yes, sir.
Q. Is there another point you want to correct?
A. The Urkhart house fronts on Wood street.
485 Q. What was the space of ground occupied by that house on the southeast corner of the land which is enclosed by a picket fence—the depth of it, — mean?
A. It is twenty (20) or twenty-five (25) feet wide; I won't be positive.
Q. What is the length of it?
A. I suppose fifty (50) to fifty-four (54) feet in length.
Q. Is that fully enclosed?
A. Yes, sir.
Q. The person who occupies that, how does he get egress and ingress there?

A. I believe he gets in from the east gate there, probably. I think there is a gate there.

Q. On the south alley?

A. Of course. I have not had any dealings with them and therefore I never paid any particular attention to them.

Q. They don't come over in your ground?

A. No, sir; as a matter of fact they don't. There is a space south of the house that is not inclosed; between the house and the alley.

Further cross-examination:

Q. I understood you in your direct examination to say that the parties who occupy that ground and paid rent to you used the whole of the ground in common?

A. They go where they please; they are not bound to any certain portion of it and are not confined to any certain direction.

Q. Well, how do you know that?

A. They never had any other authority to my knowledge and I don't know as they are bound to remain right where their houses are. They can go in and out where they please to.

Q. In other words, you simply infer from what you saw there—they going where they wanted to—that they used the land in common, Mrs. Snyder as well as the rest?

A. I never saw her in that way, and the rest I have.

Q. Is it true that you don't know of any of them having any expressed authority to occupy or even traverse any portion of the land that is not occupied by them?

A. They have never been prohibited from going over the land by me or any other party that I know of.

Q. You don't know of Mrs. Snyder or any one else or even those that don't occupy the land having ever been prohibited from ever passing over the ground?

A. No, sir.

Q. So far as you are concerned, even parties who don't live on the land pass through there all the time and are not prohibited?

A. No, sir; they come in there with provisions and haul wagons through there.

Q. You don't, then, attach any particular importance to the statement that they occupy this ground in common?

A. No; they come and go when and where they please.

Q. The people on there come and go where they please on the land?

A. Yes, sir.

J. B. GARRETT.

Mr. MASON: We now offer the deposition of S. A. Cobb, found at page 57 to page 70 of deposition record. This evidence goes to the point of possession from the spring of 1874 up to the present time.

Objected to by counsel for plaintiffs for the reason that the same is incompetent, irrelevant, and immaterial. The objection was sus-

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tained by the court; to which ruling of the court the defendants at the time excepted. Said deposition is in words and figures as follows, to wit:

486 SOPHIA A. COBB, being called as a witness on the part of the complainants and being duly sworn, testified as follows:

Sophia A. Cobb.

Q. State your name, age, and place of residence.

A. Sophia A. Cobb; age, forty (40); reside in Wyandotte at the present time.

Q. Are you the widow of Stephen A. Cobb?

A. Yes, sir.

Q. What is the date of his death?

A. The 24th of August, 1878.

Q. What heirs survive him?

A. Three (3) children and a wife.

Q. The children's names, please, and ages.

A. Alfred H., Stephen A., Nellie E.; Alfred H. is twenty-four (24), Stephen A. is eleven (11), and Dollie died in August, 1880.

Q. Are you the mother of these children?

A. I am.

Q. State if you know a piece of ground in Kansas City, Kansas, lying near Fowler's packing-house and on the line westerly of James street and between James street and Armstrong's street extended and south of the present site of the cattle-guard, and containing about four (4) acres of land.

A. I do.

Q. Who was that piece of land claimed by during the lifetime of your husband?

A. Myself and husband.

Q. Did you have title to that land?

A. Yes, sir.

Q. How many acres were there of it?

A. I don't believe I can state.

Q. Can you bound it?

A. I cannot.

Q. Can you tell about where it lies; what direction from Fowler's packing-house?

A. I don't know as I can state exactly; I know that it lies west of James street and between that and Armstrong street.

Q. About how far from the iron bridge?

A. Why, I think about twenty-five (25) rods.

Q. Did you erect any houses upon that land?

A. Yes, sir.

Q. In what year?

A. Well, I don't know as I can just say.

Q. Was it about the year 1874?

A. Yes; in 1874 or 1875, after we returned from Washington; the houses were put up, I think, in the spring after we returned.

Q. What tenants were occupants?
A. Well, I can't call the name.
Q. Would you recollect the name if I would call it?
A. I don't think I would.
Q. Was it Enos Long, if you know?
A. I could not say; that does not sound like the name; I would not say that I could repeat the names, because it has been some time ago and I don't remember.
Q. You rode by this house once?
A. Yes; several times.
Q. Was it put there near about the time that the cars commenced to run from Wyandotte to Kansas City?
A. I don't remember about that.
Q. The iron bridge had been built at that time?
A. Yes, sir.
487 Q. You passed over the iron bridge?
A. Yes, sir.
Q. Do you recollect how long it was after the iron bridge was built?
A. I can't now state how long it was.
Q. Well, did you ever hear your husband speak about this land or about this claim to the land?

Objected to by the defendant- as incompetent, irrelevant, and immaterial.

Q. I will state, Mrs. Cobb, that it is alleged in the defendants' answer that you and your husband abandoned the title to that land.
A. That is not my understanding.
Q. State if you know, during the latter years of his life, of hearing him say with respect to his determination to perfect the title to this land?

Objected to by respondents as incompetent, irrelevant, and immaterial.

A. Well, I remember hearing him remark, as we would sometimes pass the lands, that it may be worth something some day.
Q. Did you ever hear that Mr. Traber made any claim to the land?
A. Not at that time.
Q. Did you hear him (Cobb) talk about the land in connection with parties in Kansas City attempting to set up claim to the land?
A. No; I can't recollect of his speaking of any one specially, but I heard him say something about the title. He said that he would take the matter into court and have the title perfected.
Q. I will ask you to state if the state of his mind was such that he believed that he had a good title to that land.
A. He did not seem to doubt it.
Q. State whether he made any such declarations.
A. Yes. He made that remark to me—that he intended to per-

fect the title, and that the land would be worth something some day.

Q. His determination was to perfect the title to the land?

A. Yes, sir.

Q. How long was that before he died?

A. Well, it must have been two or three years; it must have been some time after that when he died, because I often heard him speak of it and about the title to the land.

Q. Did he ever signify in any way his intention to abandon the title of the land up to the time of his death?

A. No, sir; he never made any such remarks to me.

Q. Up to the date of his death did you see him drive around there?

A. The spring and fall before his death I knew of his driving on the ground and stopping there.

Q. Were there tenants on the ground at that time?

A. I don't know.

Q. Were there some houses upon the land?

A. There was one house.

Q. How many houses are there now?

A. I would not attempt to state.

Q. What did you understand to be his inclination in driving on the ground?

A. To see the tenants who were in the house, and on one time he called to talk with a party about a fence, as to whether they would put one up.

Q. When was that?

A. That must have been a year before he died.

Q. Did he visit there some afterwards?

A. Yes, sir. He was there in the spring before he died several times.

Q. He always declared that he determined to make a claim of title to that land?

488 A. That was my understanding.

Q. You may state what you heard him say.

A. No; I don't think I can exactly. I heard him remark—I — speaking about the title—that he had no doubt in his own mind that he had a good right to it; of course I paid no particular attention to it at that time.

Q. His going down and interviewing the tenants, in such things as that, was about how long before his death?

A. I think about a year.

Q. What about his going around there before that? I understood you to say that he drove around there some before.

A. Yes; he rode by there every day, and I should judge the last time he was there was in the spring before his death.

Q. Did you ever know of his employing an attorney to attend to the litigation?

A. No, sir; I don't know of it.

Q. Well, now, at the death of Mr. Cobb, after the property had been left to you and the heirs and up to the time that you sold cer-

tain interest in the land to McAlpine, did those for whom you acted as guardian or did any of the heirs abandon the land?

A. No; we did not abandon it.

Q. Did they ever give it up to Traber or any other?

A. Not that I know of.

Q. You simply turned over your title and possession to Mr. McAlpine?

A. Why, we sold our interest.

Q. And whatever there is on it?

A. Yes, sir.

Q. Did you ever hear Mr. Cobb in his lifetime express any doubt about that title in talking about his business at home?

A. Why, he often spoke about certain titles. He often spoke about his title and his possession of the property.

Q. Well, from what you know of his habits and remarks during his lifetime, are you satisfied that was the state of his mind in regard to the perfection of the title to that land?

Objected to by the defendants as incompetent, irrelevant, and immaterial and calls for the conclusion of the witness.

Q. Just judging from his habits of mind, had you any doubt as to his being the owner of that land?

A. As to his being the owner, he had no doubt — that.

Q. What did he say about his possession and title?

A. He spoke of going into court to perfect his title.

Q. To remove any question about it?

A. Yes; I think that was his determination.

Q. Did he express it that way; that the ground was his?

A. Yes, sir.

Q. Was that during the later years of his life?

A. Yes, sir.

Q. And how near to the time of his death?

A. I can't state the time—the exact time. He never for a moment had any other feeling during his entire life.

Q. You never knew that he had any other?

A. No, sir.

Q. You were in a position as his wife to have known his feelings in regard to that?

A. Yes, sir; I think so.

Q. Did you ever consent that the title to that land should be turned over to Traber and Norman?

489 A. No, sir.

Q. Did you ever consent to give any possession to them?

A. No, sir; in fact I never heard that Mr. Traber had any claim until their suit about it.

Q. Didn't they claim the houses or any portion of the land of any of their grantees; and, if they did, did they do so with your consent?

A. I never knew anything about it, and of course what I had no knowledge of I could not consent to.

Q. Did you know of Cornelia Street?

A. Yes, sir.

Q. You rented a portion of that land to her?

A. I knew that she was there. Mr. Bartlett made a lease to her.

Q. Do you recollect signing the lease?

A. I recollect signing a lease.

Q. I here present you with an instrument, dated October 21st, 1879, marked on the back with a figure 1, and underneath the name of Cornelia Street is signed; the instrument purports to be a lease by A. B. Bartlett, by E. L. Bartlett, his attorney-in-fact, and by S. A. Cobb, by A. D. Downs, administrator of the estate, attaches thereto, and is signed by yourself.

A. Yes, sir.

Q. State if you know the handwriting of L. Bartlett and A. D. Downs, and state whether the name- as purports to be signed by them *is* their signatures.

A. I think so.

Q. Have you seen those parties write?

A. I seen them sign that writing.

Q. You saw them sign it?

A. Yes, sir.

Q. Do you know the handwriting of E. L. Bartlett?

A. I think so.

Q. Please examine the lease, and state whether Mrs. Street had possession of that ground or not under that lease.

A. Yes, sir; she had possession under it; possession under the lease.

Q. Whether she lived there.

A. That is my understanding, that she went into possession of the property under that lease.

Q. Did you know Mrs. Street?

A. I have seen her in my house.

Q. Your understanding was that she entered under that lease?

A. Yes, sir.

Q. Well, did you know the house that she lived in; the one that she occupied?

A. I saw the house.

Q. What kind of a house was it?

A. I don't know that I can describe it. It was a small house.

Q. Near about what portion of the land—do you know?

A. My impression is that it was on the southeast portion of it. I am not very explicit about that.

Q. Did you know a man that occupied one portion of the land by the name of Altop?

A. No, sir; I think not.

Q. I here present you with a second instrument, which I marked on the back with a figure 2, Exhibit "2." This instrument purports to be dated 1877, and purports to be signed by A. B. Bartlett, by E. L. Bartlett, his attorney-in-fact, and by S. A. Cobb and by Joe Altop.

It appears to be a lease of the same ground mentioned in your
490 testimony; please examine that instrument and the signa-

ture thereto attached, and state if you know the handwriting of A. B. Bartlett and S. A. Cobb, your husband.

A. I do.

Q. State whether or not the signature thereto attached is the genuine signature of S. A. Cobb.

A. It is.

Q. State whether that is the genuine signature of E. L. Bartlett.

A. I think so.

Q. Did you know Joe Altop?

A. No, sir.

Q. Do you know whether Altop occupied that ground under that lease?

A. I can't say. I heard Mr. Cobb speak about him. I saw him at the house. I can't state positively whether he occupied the ground or not. My impression is that he did so.

Plaintiffs here offer Exhibit Number 2 in connection with the testimony of Mrs. Cobb as one of the exhibits of the case.

Objected to by the defendants as incompetent, irrelevant, and immaterial.

Q. Did you ever hear E. L. Bartlett at any time prior to the purchase of your interest by McAlpine—did you ever hear him say or express himself in any way as designed to abandon the land or the title thereto?

A. I never did.

Q. Did you know A. B. Bartlett?

A. Yes, sir.

Q. Did you know him when he resided here?

A. Yes, sir.

Q. Where is he now?

A. In Florida.

Q. What has been the condition of his health?

A. It has been very poor.

Q. Has he been reported as sick?

A. Yes, sir.

Q. Who has had charge of his business here in connection with his land?

A. His son, E. L. Bartlett.

Q. Are you well acquainted with A. B. Bartlett in his lifetime and your husband's interest in this land matter?

A. Yes, sir.

Q. Did you ever hear him express himself in any way that he intended to abandon this land?

A. No, sir; never in any way, that I know of.

Q. In their discussion did either of them or both of them come to the conclusion to abandon this land?

A. I never heard them discuss it in that way. I never heard them say that.

Q. What did they conclude to do in this condition, if anything?

A. Nothing further than that I heard them discussing about the land.

Q. What did you hear them discuss about it?

A. Discussing about their title and how they came into possession of it.

Q. Did they discuss about or in regard to their possession?

A. Yes, sir.

Q. Did they claim at this time to be in possession of this entire tract of land?

A. Yes, sir.

Q. In what year were these discussions, as near as you can recollect?

A. It was away back.

Q. Was it just prior to the time that Mr. Bartlett went to Florida?

491 A. No, sir; it must have been in 1874 or 1875. I can't exactly state just the time.

Q. You bought the title to the land in 1874, did you?

A. I would not state positively because I don't remember.

Q. Well, what did he say to you about it at the time he came to you to get you to sign a deed to this land to McAlpine—what did E. L. Bartlett say about examining the title?

A. He said that he owned the title.

Q. Did you receive your part of the purchase-money from McAlpine?

A. Yes, sir.

Q. Who advised you to sign this deed, Mr. Bartlett?

A. No; he did not.

Q. Did he make some further propositions other than the consideration paid by McAlpine for you to sign the deeds for the money?

A. I think not. I do not know of any.

Q. Well, did he say anything at the time about his father's abandoning the title?

A. I don't know of it or remember.

Q. Did you ever hear either one of them speak of abandoning the title and——

A. I never did.

Q. Do you recollect when you received some money from treasurer of Wyandotte county, redemption money paid on a tax certificate?

A. I don't think I do. You mean in regard to that land?

Q. Do you know how long that has been?

A. I don't.

Q. Did Mr. Cobb point out to you a house upon the ground?

A. Yes; there was a house upon the land that he showed me.

Q. Did you ever become familiarly acquainted with a plat of Kansas City, Kansas?

A. I have not.

Q. Do you recognize this land on this plat?

A. Only in regard to that part the house stood on.

Q. Would you know the ground if you saw the plat?

A. I sold to Mr. Fowler a piece of ground in there, but I never traced the ground there.

Q. On which side of James street is it on—on as you go over to Kansas City—would it be on the right-hand side?
A. Yes; on the right-hand side going from here.
Q. What would be the length of this property?
A. I can't tell.
W. Do you know the number of feet?
A. No, sir.
Q. Do you know the number of acres?
A. No, sir.
Q. Do you have some ground there yet?
A. No, sir; I have sold that.
Q. You had half—that was the easterly portion or end of this tract—set off to you and divided with Bartlett in the partition?
A. Yes, sir.
Q. Do you recollect how many feet front that half was that the court set off to you?
A. How many feet on James street?
Q. How many feet front you had?
A. I had three of those lots.
Q. What would be the frontage on those lots?
492 A. Well, I think seventy-five (75) feet.
Q. Then there would be one hundred and fifty (150) feet front?
A. Yes, sir.
Q. Then the frontage on James street would be how many feet?
A. My portion would be one hundred and fifty (150) feet.
Q. Then your half ($\frac{1}{2}$) would be half of the entire width of that tract?
A. Yes, sir.
Q. Do you know where Armstrong street runs?
A. I don't think I know.
Q. Do you know where the present site of Fowler's cooper shop is?
A. Yes, sir.
Q. In what relation to that cooper shop is the land; did it extend westerly?
A. I can't tell very distinctly.
Q. Do you recollect there was an alley along the southerly boundary of that land?
A. I do.
Q. That is the plat of Kansas City, Kansas. (Shows witness map.)
Q. The east end would be bounded by what?
A. I can't say.
Q. Wouldn't it be bounded by James street?
—. ——.
Q. Do you know where the present stock-pens of Fowler's packing-house are?
A. Yes, sir.
Q. What direction are they from this land?
A. Well, there is a house there.
Q. Some of these stock-pens are north of this land?

A. Yes, sir.

Q. Do you know where Wood street intersects that piece of land—where it would extend if run through?

A. No, sir; I don't know that I have given it any thought for the last few years; it was not laid out until the last few years.

Q. Well, did either Cobb or Bartlett abandon any portion of the land?

A. I don't think they ever did.

Cross-examination.

Mr. TRABER:

Q. Mrs. Cobb, Mr. Mason has all the time called your attention to a four-acre tract of land—do you understand it that way?

A. I don't remember the number of acres.

Q. Now, the property you speak of as having been divided to you and the children and Mr. Bartlett—how far back did it extent from James stree-?

A. The portion I sold recently?

Q. Yes; what you sold recently.

A. Well, I can't tell you; it crosses an alley.

Q. It ran parallel with James street?

A. Yes, sir.

Q. Now, you sold to Mr. Fowler whatever interest you had in—that Mr. Cobb had at his death?

A. Yes; in a certain portion that was set off to me.

Q. To whom did you sell that portion of the land?

A. To Mr. Fowler or Mr. Fowler's agent.

Q. The deed was made to Fowler Brothers?

A. Yes, sir.

Q. The deed for the property you sold was made to Fowler Brothers?

A. Yes, sir.

Q. Now, you sold to Fowler whatever interest you had in all that land you had at your husband's death in that tract, and there
493 was no portion of the land which you sold to Fowler subsequently sold to McAlpine?

A. No; I sold the certain portion set off to me. You mean to me and the children?

Q. Yes.

A. It did not extend over that ground.

Q. Is it not true that it extended nearly over half?

A. That is not my understanding at all.

Q. Do you know why it was that whole tract or the whole property in that tract was not sold to Fowler and what you sold to McAlpine was not allot-ed under the partition?

A. No, sir; I don't know why.

Q. Just explain why that was.

A. I don't know as — can state why; I never thought it was the same tract; my impression is that this piece was sold at another time.

Q. You mean to say that Mr. Cobb acquired that you sold to Mr. Fowler at one time and the land back of it at another time?

A. My impression is that it was divided afterwards, because Mr. Alden attended to procuring division of the property.

Q. Was Mr. Alden present at the time of the death of your husband?

A. Yes, sir.

Q. Mr. Alden was familiar with Mr. Cobb's interest in that property?

A. My impression is that he was very familiar with it.

Q. He consulted with Mr. Alden about that property?

A. I can't very well recollect about that.

A. Please explain your understanding for the occasion of the division at the point at which it was divided.

A. Mr. Alden brought a partition suit, and it was divided between Bartlett and the heirs, and so many feet set off to the heirs. I never asked why the other portions was not set off. So many feet was set off to the heirs and so much to me; so many feet.

Q. Then you don't know why it was set off in that way; it was simply done that way by Mr. Alden, and that is all you know about it?

A. No, sir; I asked no questions about it.

Q. Don't you know, Mrs. Cobb, as a matter of fact, that there was a controversy over *to* this tract of land sold to Mr. Fowler?

A. No, sir.

Q. Nobody ever did question your title to that land that you know of?

A. No, sir; not that I know of, except now.

Q. You spoke about Mr. Cobb having talked about his ideas of perfecting the title. Now, do you know what portion of that tract of land he had reference to?

A. My understanding was that was the land where the house was.

Q. Which house?

A. The house that had been erected.

A. Next to James street?

A. No, sir.

Q. Well, where did Mrs. Street live then?

A. I can't say where she lived.

Q. Well, what land was the house on?

A. I can't tell; I simply know that there was a house thereon on the ground; whether that was the house which she lived in I can't tell.

Q. You don't know whether the house was on the land you sold to Fowler or not?

A. I think it stood west of it.

Q. Was it not on that part allotted to Mr. Bartlett, and do—didn't the rear of the lot which was sold by you to Mr. Fowler run back further than where the house stood and up to the river?

494 A. Not to my recollection; I think it stood west of that line; that is my impression.

Q. Do you know where Wood street runs up to that piece? It didn't run right up to it and stop?

A. No; I know where Wood street is now.

Q. Do you know how near back of Wood street that ground ran which you sold to Mr. Fowler; how near back where Wood street would run if projected through?

A. No, sir; I don't know as I can; I never gave it any thought.

Q. Now, then, this property was set off to Bartlett and to you and the children. Do you know at that time what portion of the whole tract Mr. Cobb had been speaking of to you?

A. I can't say that I know anything about that time; I know only from the conversation between us at that time.

Q. Now, will you be kind enough to tell us under whose advice it was that you sold this land and made this deed to Mr. McAlpine?

A. I don't know how it was, but I was asked to do it.

Q. Do you know anything of the value which Mr. Cobb placed on that property?

A. No, sir.

Q. I am talking of the whole tract—that sold to Mr. Fowler and that part sold to Mr. McAlpine.

A. No, sir; I don't; I only know that Mr. Cobb made that remark.

Q. If that was Mr. Cobb's idea of the value I would like to have you explain how it happened that you sold your interest for the consideration expressed in the deed.

A. I will tell you; I didn't want any litigation, not knowing anything about the matter myself; I didn't want to jeopardize my property.

Q. How did it happen that you sold for the price mentioned?

A. My understanding was that Mr. Cobb could make the title good; he showed me the title to this other land and I said, How about the title to the other land where this house is built? and he said, I shall perfect the title; and my impression is that he spoke of some shadows on the title.

Q. Now, when you speak of Mr. Cobb's conversation in that respect he referred to that part of the land running back of that part which you sold to Mr. Fowler?

A. Yes, sir; it is where the house was.

Q. The house you refer to, I understand you to state, stood off of the ground which you sold to Mr. Fowler and on another piece of ground?

A. That is my understanding; there was nothing on except the one house.

Q. Will you be kind enough to tell us who it was who proposed to you to make quitclaim deed to McAlpine?

A. Why, I think E. L. Bartlett.

Q. You had a conversation with him at that time?

A. Yes, sir; at my house.

Q. Did he tell you the proposition that Mr. MacAlpine had made?

A. I can't say that he said he would give such a sum.

A. Did Mr. Bartlett state what he would give?

A. I can't state about that; it is a very indistinct impression in my mind.

Q. Can't you explain how it happened that you made up your mind to take that amount of money *which* Mr. Cobb would make you rich if you could perfect the title?

A. As I said before, I didn't like to get into any litigation; I had a perfect terror of it, and I thought that sum was better than a lawsuit.

Q. Who told you that there would be a lawsuit?

A. I understood that there had been lawsuits, and Mr. Bartlett told me that he expected that there would be more.

495 Q. Did you know how much land you was selling?

A. No, sir; I can't say that I did.

Q. You did not know whether you were selling a number of feet or a half section?

A. Yes, sir; I did.

Q. Mr. Cobb had shown you the size of this property and you had a pretty good idea of the size of the property where the house was?

A. Well, I had never marked it out.

Q. He did not refer in this conversation to any land beyond that line?

A. My impression is that he said that ground right around where the house stood. He may have intended to convey the idea that it ran back to the Kansas river.

Q. Did you ever know that this piece of property lying back of that which you sold to Mr. Fowler had been sold as the property of Mr. Snyder to pay Mr. Snyder's debts?

A. Did I know it at that time?

Q. Yes.

A. Well, I can't remember.

Q. You didn't know anything about that?

A. No, sir.

Q. You didn't ask anything about what that property was worth when Mr. Bartlett came to you to get you to make the deed?

A. No, sir.

Q. You never asked anything about what it was worth?

A. No, sir.

Q. Did you have any idea about that?

A. No, sir; I must say that I did not think much about that at that time.

Q. Did either Alden or Bartlett say anything to you about the probability of their being successful in holding that property; and, if so, which one of them?

A. I can't say as to that.

Q. Well, I will refresh your memory and ask you whether Mr. Alded did not come to you and say to you——

Objected to by the plaintiff as incompetent, irrelevant, and immaterial and hearsay.

Q. Now, I will ask you, Mrs. Cobb, whether Mr. Alded did not

come to you and say to you, as your legal adviser, that in his opinion and from his conversation with Mr. Cobb that Mr. Cobb's title to that land was not good?

A. No; I don't think that Mr. Alded told me that.

Q. Don't you know that Mr. Cobb, a short time prior to his death, made up his mind and so expressed it, as to that part of the four-acre tract lying back of that that you sold to Fowler's, that the title to that tract was not good?

A. No; Mr. Cobb — gave me any such impression than that he considered that he had title and that it was our property. He never gave me any other impression than that the title was good and that he should continue in possession of the property.

Q. You say that you don't remember who it was that first came to you and requested you to make this deed to Mr. McAlpine. Was it not Mr. McAlpine himself?

A. Well, I can't say as to that.

Q. Well, was it Mr. Alded?

A. No, sir.

Q. Was it Mr. Bartlett?

A. It is my impression that it was Mr. Bartlett. He didn't advise me anything about it, but said that Mr. McAlpine had made the proposition and that he had accepted it.

496 Q. Did you ask him why you should take that a sum?

A. I can't say whether I did or not; I can't remember the conversation.

Q. What was the conversation?

A. At my house; I can't say what it was.

Q. Did Mr. Bartlett say that he had concluded to take that for his father's?

A. I think he did, but I can't say; there was some conversation, but I can't say what it was.

Q. Was it Mr. McAlpine that came to you first?

A. No, sir.

Q. Nor Alded for Mason?

A. No, sir; I think not.

Q. You have no interests in the property now, have you?

A. No, sir; but it is my impression that the heirs has—Nellie. It is not sold.

Q. You gave a quitclaim deed to the property, did you not?

A. Yes, sir.

Q. You say that you don't know anything about what the value of the property was at that time?

A. No, sir; I never asked.

Q. You knew it was considerable of a tract, did you not?

A. Quite a large tract, it is my impression.

Q. Mr. Fowler had already built his packing-house there at that time?

A. Yes, sir.

Q. I mean when you sold to McAlpine.

A. I can't say; my impression is that he had not.

Q. You don't know whether Fowler's packing-house was built there or not?
A. I can't remember.
Q. Now, who paid you the consideration received for your interest in that land?
A. Why, I think Mr. Bartlett.
Q. Do you remember the amount?
A. No, sir.
Q. Can you approximate the amount?
A. Well, really I can't tell you that.
Q. Well, is it true that you were paid a single, solitary cent?
A. Well, I think I had a check given me.
Q. Do you know whose check it was and on what bank?
A. No, sir.
Q. Did Mr. Bartlett tell you how much he got?
A. I think he told me, but I can't tell you how much it was.
Q. He didn't tell you why it was he sold it so cheaply?
A. No, sir.
Q. Didn't you think it strange that he sold so much land for that much money?
A. No, sir; I don't think I did.
Q. You knew something of the value of property in Kansas City, Kansas, at that time?
A. Yes, sir; I knew something about it.
Q. How long after you sold to Mr. Fowler was it that you sold to Mr. McAlpine?
A. I very recently sold to Mr. Fowler.
Q. Well, within the last six months?
A. Yes, sir; I think it was in February or March.
Q. How much did Fowler pay you?
A. I can't tell you.
497 Q. Maybe you can remember how much a foot it was.
A. No, sir; I think nine hundred dollars ($900).
—. A lot of twenty-five (25) feet front?
A. Yes, sir.
Q. Those lots you sold to Mr. Fowler run back to the land you sold to Mr. McAlpine?
A. No, sir; I don't think they run that far back. I sold to the alley.
Q. Then you have some back of the alley yet?
A. No, sir; that was sold to another party.
Q. Laying between this tract and the alley?
A. Yes, sir; between Wood street and the alley.
Q. Do you remember the size of it?
A. No, sir.
Q. When did you sell that?
A. A year ago last fall.
Q. How much did you get?
A. Seven hundred dollars ($700).
Q. To whom did you make that sale?

A. I don't recollect positively. I don't know the name of the party.

Q. But you did sell it to some one, and whatever the size of the property is is described in this deed and is the same ground for which you received seven hundred dollars ($700)?

A. Yes, sir; I sold my portion.

Q. At the time you made this deed to McAlpine was it not your understanding that you was just selling whatever interest Cobb and Bartlett owned?

A. I don't know anything about that. I cannot say.

Q. Has anything ever been paid for any portion of it except the money that was paid to you?

A. You mean for the title to that tract?

Q. For the tract sold to McAlpine.

A. I think I sold my share.

Q. Have you and your children ever received anything since the execution of your deed?

A. Bartlett sold it.

Q. Do you know how much he got?

A. No, sir; I don't remember.

Q. He sold his to Mr. Fowler?

A. No, sir; I think not.

Q. So you can't tell anything about how much money you got at the time from Mr. McAlpine?

A. No, sir; I cannot.

Q. Well, now, is the consideration expressed in the deed what you got?

A. I can't say about that.

Q. You know whether it is properly expressed there or not?

A. No, sir.

Q. You don't know what bank the check was on, nor whose check it was nor the amount?

A. No, sir.

Q. Where were you living at that time?

A. On —— street, in ——.

Q. You thought that Mr. Bartlett understood the title to that property at the time he made the sale, did you not?

A. Can't say. Can't say about that.

Q. Well, you relied upon him as to that fact when he sold to McAlpine for the price that he did?

A. Yes, sir.

Q. You are unable to fix this time. Did you sell upon his judgement?

498 A. I never heard him express his judgment as to what it was worth. He only asked me to make a quitclaim deed, which I did.

Q. And you believe that you had a good title to it?

A. As I said before, I did not want any litigation. There was some; other parties making claims, and I did not know anything about their title.

Q. Suppose Mr. Bartlett had come to you and offered you ten

dollars ($10.00) would you have taken it without inquiring something—what was the matter with the title?

A. All my understanding was from what Mr. Cobb said. I knew nothing about what it would take to perfect the title.

Q. Now, if Mr. Bartlett had have come to you and offered you ten dollars ($10.00) would you have taken it?

A. Yes, sir; I suppose so.

Q. You would have been glad to get it right at that time?

A. I don't know anything about that.

Q. Suppose that the title had have been good and you knew that it was, or at least felt that it was, and anybody would have come to you and offered you that sum, would you have taken it and signed a deed?

A. I don't know. Property was very low then; of very little value. That is my impression.

Q. With the title perfectly good would you not have known that it was worth more than fifty dollars ($50.00) for an acre of ground?

A. Well, now, I can't say. It was not in the real-estate line. It was out to one side. I only speak of my impression.

Q. You would not think that fifty dollars ($50.00) would be a fair value for an acre of ground in that locality?

A. No; I would not. I don't know how I felt a year ago.

Further redirect examination:

Q. Now, Mrs. Cobb, was that partition when made between the Cobb interests and the Bartlett interest that was subsequent to the sale of McAlpine?

A. Well, was it not about the time? I don't remember.

Q. Did Mr. Traber ask the reason why you only took so much ground as the deed took in? Now, why did you not take in the whole ground that had been claimed by your husband? Well, now, is it not a fact that you had sold the westerly end to Mr. McAlpine by quitclaim deed?

A. I had; yes, sir.

Q. Then, the reason why was that the westernly end had been bought by Mr. McAlpine and was not included in the partition case?

A. That is my impression.

Q. In the lifetime of Mr. Cobb, with all your knowledge as to what was said by him as to his proposed — and in *and* the conversations he had with A. B. Bartlett, did you ever hear him separate or divide the tract that he claimed there into any separate tract or did he mention it as a separate tract?

A. No, sir.

Q. Did he ever mention any part of it separately or distinct from any other part of the whole tract?

A. No, sir.

Q. Then, that you sold to McAlpine was which end or a large portion of the tract, the westerly or the easterly end?

A. I think the westerly end.

A. And a part of that tract that was for years previously claimed by your husband or by Cobb and Bartlett?

A. That portion where the house was.

Q. Did the land extend west of the house?

499 A. My impression is that it did; I can't say.

Q. Was there any inclosure or fence west of the house that you speak of near the center of the tract to separate or divide the eastern portion of the tract from the western portion of the tract?

A. No, sir; there was no fence; I don't remember any.

Q. There was no fence running the entire length of the tract northwardly and southwardly dividing or separating the tract into two tracts?

A. No, sir.

Q. No stakes or monuments of any character?

A. No, sir; I don't know any.

Q. The west line of that ground was somewhere near the east side of the cooper shops of Fowler's?

A. Really, I can't say about that.

Q. Was the westerly side on the Wood street extended?

A. Yes, sir.

Q. Would it be much westwardly?

A. I can't say about that.

Q. Do you knw where Wood street now is?

A. No, sir; I can't say that I do.

Q. If you would be westerly of where Wood street now is?

A. Yes, sir; I think so. I think it would abut up against the street there now. At one time we drove by the premises or on the ground and placed a stake on the north side of it. The stake is located on the eastern boundary of Armstrong street, as now laid out, and on the south line of the ground.

MRS. S. A. COBB.

Mr. MASON: "We now offer in evidence the deposition of Benjamin Schnerline, found on pages 70 to 75, inclusive, of this deposition record. This shows the payment of certain taxes and also proves the issue of certain tax certificates."

Objected to by counsel for plaintiffs because incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which ruling of the court the defendants at the time duly excepted.

Said deposition is in words and figures following, to wit:

BENJAMIN SCHNERLIE, being called as a witness on the part of the complainants and being duly sworn, testified as follows:

Benjamin Schnerlie.

Q. Are you the present treasurer of Wyandotte county, Kansas?

A. Yes, sir; I am.

Q. You have brought here, as subpœnaed, the tax-roll of Wyandotte county, have you?

A. Yes, sir.

Q. What book is this?

A. This is the tax-roll of Wyandotte county for the year 1875, except as for Wyandotte City.

Q. That is the book you have open before you now?

A. Yes, sir.

Q. Now, upon this book, upon page 140, I see a tract marked on this book, on the margin, Bartlett and Cobb and under the name of the supposed owner, and also a tract of four acres, and the description after the name of the party represented six hundred and forty (640) feet long and three hundred (300) feet wide, and the amounts under the heads at each page. Will you please state whether all the taxes are properly entered up under the different heads?

A. Yes, sir; the amounts are properly placed, whether
500 they are the proper amount or not. I can't state without looking at levies; all that is necessary is to enter the names of the parties, description, and the amount of the State, township, and city taxes in one column and the school taxes in another and then the poll in another.

Q. The headings of these columns represent the entries which are made below, but whether they are entered up properly or not I can't say.

Q. Will you state whether the taxes for the year 1875 are properly entered up or not?

A. Yes, sir; the proper entries are made.

Q. You may state whether any entry for the year 1875 is made for the taxes paid and the amount therein described.

A. Yes, sir.

Q. Who was county treasurer at that time?

A. I don't say as a matter of record, I say from memory that Mr. McAlpine was.

Q. In whose handwriting are these entries made?

A. I don't know either the hand of Mr. Bishop or Mr. Hooley's; that looks like Mr. Whooley's.

Q. Do you find an entry of 214, 90 for the year 1875; are those entries made during McAlpine's time as county treasurer?

A. I think so; they were made the — day of January, 1876.

Q. What was Mr. McAlpine, treasurer at that time?

A. Yes, sir.

Q. Then all the proper entries are made on the tax-roll for that year?

A. Yes, sir.

Plaintiffs here offered this entry as evidence in this case, including the headings and printed matters as evidence at the top of page 140.

Q. I now call your attention to another book which you have opened before you. Please state what that book is.

A. That is the record of tax sales of land, sold from the years 1873 to the year 1877, inclusive.

Q. What page have you open before you?

A. Page 40.

Q. The heading of that page indicates the tax sale for what year?

A. That is a record of tax sales for the year 1875, made in 1875, to Wyandotte county.

Q. Do you find entries here under any of those headings of a tax sale?

A. Yes; there is a description marked 2049.

Q. What names are marked here as the owners of it?

A. Cobb and Bartlett.

Q. These headings at the top of the page indicates the nature of the entries in the column below?

A. Yes, sir.

Q. Now state whether or not any omissions occur in these entry we have mentioned for the year 1875.

A. I can't say. I don't know.

Q. Does there appear to be anything fil-ed in under that column you find, any entries, any subsequent taxes, and a sale under that certificate for the year 1875?

A. I don't know. Probably, if I explain, the nature of this book will appear how it is.

Q. Go on and make the explanation.

A. This is a record of the tax sales of property that were delinquent for the year 1874, and among those tracts I find this Cobb and Bartlett tract.

Q. Who took the certificate afterwards?

A. It was sold to Wyandotte county.

Witness here explains the nature of the entries in the book.

501 A. Then, when any subsequent taxes are paid on the certificates the entries are made in these columns here. I see for the years 1875, 1876, and 1877 the taxes may be paid, but does not appear; there may be an omission.

Q. Well, do you find any entries under headings for taxes for 1875?

A. No, sir; there is no entry for that year; none for 1876 nor 1877 under that certificate.

Q. Those same taxes were marked paid on the tax-rolls for the years 1875?

A. Yes, sir; paid at the same time this certificate was issued. Whether it is an omission to enter it on the tax-sale book or whether there is a tax receipt for them the records of our office do not show; there is no record of it.

Q. Those entries were made, concerning which you have testified, on what page?

A. Page 40.

Q. What is the number of the entry?

A. The second entry on page 40.

Q. Now, Mr. Schnerlie, have you with you a certain bond and affidavit marked certificate 49, filed Aug. 14th, 1877, concerning this same certificate 49?

A. I have.

Q. When was that filed, if you know?

A. That I don't know. There is no signature of the officer to the paper. I know, as a matter of fact, who was treasurer at that time and the person making the affidavit. The paper shows who made the bond and affidavit.

Q. Well, who was it?

A. The bond is signed by E. L. Bartlett and D. R. Emmons to E. S. W. Drought, county treasurer. The affidavit is made by Bartlett.

Q. Do you know what those bonds are usually filed for?

A. I know what this was for—to secure the amount of redemption money that had been paid.

Q. Is there any possible way when a certificate is lost to get money from the treasurer unless such a bond is filed?

A. There is no way to get the money out of the treasury if a certificate is lost but to file an affidavit and bond for the amount, and upon that affidavit and bond the treasurer——

Q. The entries shows that the bond was filed when?

A. August 19th, 1879.

Q. Where there is no possible way that Mr. Bartlett could draw this money until such an affidavit and bond was filed?

A. Unless the county treasurer chose to do so on his own responsibility, and then he would be liable on his bond.

Plaintiffs here offer in evidence Exhibit No. 3 in connection with the evidence of the witness.

Objected to by the defendant- as incompetent, irrelevant, and immaterial.

Q. Now here I have another book. Please state what that book is before you.

A. This is a record of the tax redemption of the county in which are entered all redemption certificates held by individuals and the date and number of the certificate, the date sold, the description of the property, the name of the purchaser, the date of redemption, and the amount paid; also, when this money is paid, the signature of the person to whom paid.

Q. What does the printed matter at the head of the column indicate?

A. It indicates just what I have described.

Q. The first column on the left indicates the number of the certificate?

502 A. Yes, sir.

Q. Do you find an entry or certificate No. 49?

A. Yes, sir.

Q. What entry is opposite certificate No. 49?

Witness here reads entry on 2nd page of letter C.

Q. What money was disbursed and on what day?

A. The 3rd day of September, 1879.

Q. That is what the record shows?

A. Yes, sir.

Q. Is it possible that any parties could have receipted for that

money without it coming regularly and properly from the county treasurer and without receipting for the money on the books?

A. No, sir.

Q. The record would show the time the redemption money was disbursed?

A. Yes; that is all the record of disbursement.

BENJAMIN SCHNERILE.

We now offer the deposition of Geo. Alltop, found on pages 73 to 84 of the deposition record. This is to show that possession of the land in controversy from the early spring of 1874, before this Altop suit was commenced, upon which plaintiffs claim, continually up to 1879.

Plaintiffs object to the deposition because incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which ruling of the court the defendants at the time duly excepted.

Said deposition is in words and figures following, to wit:

GEO. ALLTOP, being called as a witness on the part of the complainants and being duly sworn, testified as follows:

Q. State your age, residence, and occupation.

A. My age is 34; I live over in the bottom, in Kansas City, Kansas.

Q. How long have you resided in Kansas City, Kansas?

A. About twelve (12) years.

Q. Are you acquainted with a piece of land lying in a southwesterly direction from the site of Fowler's packing-house and between Wood and Armstrong street extended and northwardly of an alley running along on the northwardly part of *the* Kansas City, Kansas?

A. Yes, sir; I have been on that and over it for the last twelve (12) years and pretty well acquainted with it.

Q. Who claimed the tract when you knew it?

A. Well, it is supposed to be owned by Mr. McAlpine.

Q. Well, in former years who owned it?

A. Well, in former years I don't know who owned it.

Q. In former years did you know S. A. Cobb?

A. Cobb owned a piece of land there; this was above of here you are speaking of; his was between Wood and James street-.

Q. Well, that whole four (4) acres was claimed by Cobb and Bartlett?

A. That is not my understanding. He did not claim——

Q. Well, did you build a house on the land?

A. Well, yes; they came over there after I was on the ground and said it would not cost me any lease; that the land belonged to them.

Q. Who did that?

A. I don't think it was Mr. Cobb himself; I think it was his agent.

Q. How many years ago was that?

A. That has been seven (7) years ago, I suppose. I don't know exactly. It was the year we had the high water.

Q. You received a lease from them, did you not.
503 A. Yes, sir.
Q. Well, the piece of ground you leased is the piece of ground that you occupied?
A. Yes, sir.
Q. Was the lease in writing?
A. Yes, sir; they gave me a piece of writing.
Q. I will call your attention to a writing signed by A. B. Bartlett, by E. L. Bartlett, his agent and attorney-in-fact, and by S. A. Cobb to Geo. Alltop; that is yourself?
A. Yes, sir.
Q. Date, June 18th, 1877?
A. That is it.
Q. I will mark it on the back Exhibit 4 by way of identification. Will you please look at that instrument and state your knowledge of it, whether you ever saw that instrument before; if so, what was its purpose and object?
A. He read this over, but I don't think it read that way, that I was his tenant.
Q. Did he give you a lease of it?
A. Yes, sir; he gave me a lease.
Q. You had a right to cultivate it, but you never did, probably?
A. No, sir, I never cultivated it.
Q. Was your name signed to the lease you held that property under?
A. Yes, sir; my name is signed to it.
Q. Is your signature at the bottom of that?
A. Yes, sir.
Q. When did you put your signature there; at the time of its execution?
A. I suppose so.
Q. What year was that in?
A. That was probably 1877, I think.
Q. Well, was that the same paper that was given you, or did you have a duplicate?
A. Well, I think this was the paper I signed; I had nothing to show myself.
Q. You signed your name at the bottom there?
A. Yes, sir; I signed my name there.
Q. Did you go into possession of that land there?
A. Yes, sir; I had a house and a garden fence in there.
Q. What kind of a house did you build?
A. I had a house about 12 by 16, and then a kitchen to it.
Q. Any out-buildings.?
A. Yes, sir; a stable and a wood shed.
Q. How many years did you occupy there under that lease?
A. I think two years; yes, sir; over two years.
Q. How did you finally dispose of your interest there?
A. I sold the house to Mrs. Street.
Q. You sold your interest there to Mrs. Street; do you recollect how much you was paid?

A. It was in trade; I got a horse and wagon and a set of harness.

Q. Look at that paper and see if you know the signature thereto attached; do you know S. A. Cobb's signature?

A. Well, I can't say whether that was there when I signed it or not, but I guess it was.

Q. Who came to you to sign that paper as agent?

A. I can't say who it was.

Q. Was it young Lawyer Bartlett?

A. I suppose it was; I don't know, though.

504 Q. What kind of a looking man was he?

A. A tall, slim man, with light hair and light complexion.

Q. Do you know whether he was the party who signed here?

A. No, sir; I did not see anybody sign at all.

Q. He just got you to sign here?

A. It was already signed when he came for me to sign it.

Q. He just gave you permission for you to put your house there?

A. I had the house there when he came there; no, sir; I moved the house up there before I seen him. I did not know whose land it was. I just moved up there. I thought if anybody ordered me off I would move again.

Q. How long before this writing was made did you move your house there?

A. Probably two months.

Q. You don't know the signature to that instrument except your own?

A. No, sir.

Q. That is the same property that Mrs. Street afterwards occupied?

A. Yes, sir.

Q. How long did she occupy it, if you know?

A. I think she occupied it three years.

Q. You occupied that ground from 1877 up to the time you sold to Mrs. Street?

A. Yes, sir.

Q. Well, did you know a man by the name of Enos Long?

—. ——.

Q. Well, did you know a man by the name of Enos Long living on the land when you went there?

A. Yes, sir.

Q. Where was his house?

A. He lived on James street.

Q. Can you give me about the location of his house?

A. Well, it was fronting James street.

Q. On which side?

A. On the west side.

Q. Was it on this tract of land?

A. Yes, sir; supposed to be on this same tract of land.

Q. Do you remember of putting a fence around this tract of land mentioned in the lease?

A. Nothing; only around my house.

Q. Did anybody interfere with your possession while you were in that house?

A. No, sir; nobody.

Q. Did anybody ever annoy you about wanting you to leave the ground?

A. No, sir.

Q. You kept and maintained possession of this tract of land all the time?

A. I just maintained what I had fenced; that is all. I had right there. I never saw any of the parties until that time that he had me come over and signed that paper. That is my writing.

Q. Where do you work now, Mr. Alrop?

A. I can't tell you now. I have just moved into town and have not got started.

Q. Where have you been absent?

A. I have been out in Olathe, Kansas.

Q. You left your house—your own ground there, in Armstrong—about a year ago?

A. Yes, sir; I sold that.

Q. Then after you sold that house to Mrs. Street where did you go to live?

505 A. I bought and moved into a house that Bill Jones had built on a piece of ground owned by——

Q. With reference to this land where did you go?

A. I moved right in a house one hundred (100) feet south of there.

Q. South and some west of there?

A. Probably some fifty (50) feet west of there.

Q. Well, you say that W. M. Jones built that house?

A. Yes, sir.

Q. Did you say that he built it or that he bought it?

A. W. M. Jones built it.

Q. How long did you occupy there?

A. I occupied that house several months, I suppose.

Q. That is the only house you knew him to have possession of?

A. I suppose it is; it is the one that is right next to where you had that house when you lived there.

Q. One of those houses that blew down when the great storm was a few years ago?

A. No, sir; I don't know whether that blew down or not; it is the third house from Wood street; the third house from the alley, from the end of Wood street.

Q. What you call the Mitchmaw house?

A. Yes, sir.

Q. Did anybody collect any rent from you while you lived in that house?

A. No, sir; Jones said that he had a lease from Traber.

Q. You didn't pay rent to anybody while you lived in that second house?

A. No, sir.

Q. Did you occupy that ground when McAlpine fenced the ground on the west end of that four-acre tract?

A. No, sir; I had sold it then.

Q. Was you there when I came there to build a fence?

A. Well, I think it was fenced while I was there.

Q. Do you recollect my coming and fencing the ground, and did you fence it before you moved there or after you moved there?

A. I fenced before I moved there; then I was there when it was fenced.

Q. You was there when the ground was fenced by McAlpine and Mason?

A. Yes, sir.

Q. Did you ever hear of this same agent—the man who gave you the lease—going around there and seeing about rents, &c.?

A. No; I don't recollect of his coming around any more at all; I don't think he did.

Q. He may have been there?

A. Yes, sir; he may have been there.

Q. You were away in the day-time at work?

A. Yes, sir; I was always, all the time, in the day-time.

Q. I will ask you when Enos Long lived there.

A. I can't tell you just when it was. I know Enos Long before he moved there; a short time before he built that house on the ground.

Q. You knew his family?

A. Yes; I knew them when they lived on James street; I think right at the same time; if it was not at the same time it was before they lived in that house; it was about the same time.

Q. When you went there and built your house you saw that house there?

A. Yes, sir.

Q. What kind of a house was it?

A. Well, it was probably 12 by 14, with a shed kitchen to it.

Q. A shed kitchen on the south side?

A. No; on the west end.

506 Q. Was there any enclosure around it at any time?

A. Well, there was a fence around it at one time. I don't know whether it was just then or not, but it was fenced up at one time.

Q. Was there somebody living there when you was building that house?

A. There was somebody there when I was building; I don't know whether it was him or not. His brother, Therin Loche, lived there at the same time.

Q. Do you know where he moved to when he moved away from there?

A. No, sir; I don't believe that I do.

Q. Do you know where he is now, Mr. Altop?

A. I don't know; he was living in Kansas somewhere.

Q. Where is his wife?

A. His wife is in Moberly, Missouri. He lived, I think, with a daughter in Topeka.

Q. Do you know whom he claimed to hold that ground under?
A. Cobb and Bartlett, I believe.
Q. That was Congressman Cobb?
A. I don't know anything about his being a Congressman, but I know it was Cobb and Bartlett tract, and it used to go under that name, as near as I recollect, and they held this claim under them.
Q. Do you recollect any other house being there from 1874 to 1877?
A. This house that Mrs. Meadows lived in; that was there on that ground. I think that was all the houses that was there at that time.
A. Yes; that was all the houses I know of at that time.

—. I here present this lease, concerning which you have testified, and marked Exhibit 4, a part of the testimony of the witness.

Defendants object to the introduction of which evidence upon the ground, first, that it has not been shown that E. L. Bartlett had any legal authority to execute the same for A. B. Bartlett; and, second, because it is a pretended contract, without any consideration.

Q. Mr. Alltop, you testified that before you moved into that house there was — that you spoke of that somebody came to you and talked with you or you called at his office in Wyandotte?
A. I called at no office.
Q. Did you go uptown for some purpose?
A. No, sir.
Q. I understood you to say that you went uptown to his office?
A. No, sir.
Q. Where was this lease signed by you?
A. The lease was signed in my house. It was brought to me and I read it over. I was about half sick at the time, and he brought it in and I signed it.

Cross-examination:

By Judge GOODIN: I didn't quite understand you, Mr. Altop, and I will ask you whether this house of yours—whether you built it or simply moved it there from some other place.
A. I moved it there. In the time of high water I moved it from the river bank.
Q. Where was it with reference to this land you have been talking about; was it on any portion of it?
A. No, sir; it was not on the land.
Q. I did not understand where this house was that you built—on what part of the ground; where was it from James street?
A. Well, it was probably two hundred (200) feet west of James street, and about that same from the alley across from Wood; now about 150 feet from the alley and cross the end of Wood and north of the alley crossing Wood.
Q. How far west from James street?
507 A. I think I have told you.
Q. Well, give us the distance.

A. About two hundred (200) feet.

Q. That is 150 feet north of the alley crossing Wood street?

A. About two hundred (200) feet west of James street.

Q. How long did the house remain there?

A. Well, it is there yet.

Q. This house you sold you have put a fence around?

A. Yes, sir; I had a fence around it and I had a garden and some shade trees.

Q. How much ground did you enclose?

A. I did not have quite a half acre, I don't think.

Q. Well, where was this Long house you speak of from your house—which direction?

A. It was north of where I lived.

Q. I understood you to say, fronting on James street.

A. Yes, sir; running right on James street.

Q. At any time you know of, an enclosure there, how much ground was enclosed?

A. I don't think over two lots.

Q. Twenty-five (25) feet by how long?

A. About thirty (30) feet by one hundred (100), I suppose.

Q. Thirty (30) feet by one hundred (100) that Long occupied. Now, I understand you to say that when you moved your house down onto that land you did not make any enclosure; you just brought your house out of the bottom and put it there?

A. Yes, sir; I just wanted to get out on high ground.

Q. It was not your purpose to lease from anybody?

A. It was my purpose to lease if they came around, and if they did not come around I would not lease.

Q. You thought that they might hunt you up?

A. Yes, sir.

Q. Who was that that come around?

A. Why, it was Bartlett or Cobb's agent.

Q. You were not acquainted with the man at all?

A. No, sir; I was not personally acquainted with him.

Q. What makes you think that this man was an agent for Bartlett if you have no recollection of their names?

A. I had seen them pass along in buggies, and they would say they were Cobb and Bartlett. I ain't sure whether it was him or not. I would not know him if I was to see him. I will tell you when the man came there for me to sign the papers, and when they went away they said that was Bartlett that brought the papers.

Q. This man when he first came did not bring any papers?

A. Not the first time.

Q. You did not agree to anything at that time?

A. Well, he told me to stay there and it would not cost me anything, and to put a fence there.

Q. About all he said was just as you remember. It was that just you stay here and it shan't cost you anything?

A. Yes, sir.

Q. Did the man attempt to mark out the land that he had any claim to; and, if so, what was the extent of it?

A. No, sir; he told me that he owned that tract of land.

Q. Did he show you any corners?

A. No, sir; he showed me no corners. He said he owned clear out to the alley.

Q. At that time all that part of the country was all open?

508 A. There were a few houses right close to the river bank.

Q. That is, down in the vicinity where you had trouble with high water?

A. Down back of where the ice-house is now.

Q. What was it he said—did he say that he owned it himself?

A. He said that it belonged to Cobb and Bartlett. I don't know whether he said Bartlett or Cobb.

Q. Did he tell you the number of acres there were?

A. No, sir; he did not say.

Q. You know, however, that he claimed clear up to James street?

A. Yes, sir.

Q. That is where this Long house was?

A. Yes, sir.

Q. That was there before you went there? You went there in 1877?

A. Yes, sir; went in 1877.

Q. Did you go in the spring of the year?

A. In the summer time.

Q. You remained there until about 1880?

A. No, sir; about 1878 or 1879. I think I stayed there about two years.

Q. You stayed there up until you sold your possessions to Mrs. Street?

A. Yes, sir.

Q. Mr. Mason asked you under whom Long claimed, and I understood you to state that he claimed under Cobb and Bartlett, and at the same time you stated that — never said anything about it?

A. I heard Bartlett say that he claimed under him.

Q. You did not get it, then, from Mr. Long or from any one that occupied the house?

A. No, sir.

Q. Now, at the time you went there you say you think that some one was living in the house. Are you sure or is it merely an impression?

A. No, sir; there was somebody in that house.

Q. You don't know whether it was Long or not, or whether it was his brother-in-law?

A. No, sir; I knew there was somebody in the house, but I would not say positively who. I think it was either Long or his brother-in-law.

Q. Is your recollection so that after so long a time that you can say that you saw either Long or his brother-in-law there?

A. I can't say as to that. I know I saw somebody in there. There was a negro family occupied it afterwards.

Q. Well, please state again what was the distance from your house to the Long house.

A. It must have been two hundred (200) feet.

Q. And in what direction from your house to the Long house and which way would you have to go to get to the Long house?

A. A little northeast.

Q. You signed that lease or instrument without any knowledge whether those parties had any right to the land or not?

A. They came there. I supposed they had a right to it or they would not have drawn the papers.

Q. I suppose that anybody that came along there and told you that they owned the land and that you could stay there that you would have signed any papers they wanted you to?

A. Well, I have heard from other parties that they owned it.

Q. They did not ask you any rent; they didn't ask you to do anything; there was no consideration moving from you at all; you just went there and waited for somebody to come along and claim the land, and if any one had come there and offered to you a paper giving you the right to stay there you probably would have taken it?

509 A. Well, I don't know as I would from everybody.

Q. If he had come down there and entered into a lease with you whereby you was to do something or pay something, you probably would have wanted to know if he had any authority, but if he had come down with a piece of paper and did not ask you to do anything or pay any rent, and you did not know who he was, and made a claim there, the same as this other gent. did, and says, you can stay here as long as you are a mind to, probably you would have taken it, and you would not have been concerned whether he had any interest there or not?

A. I had heard that he owned the land in there, but I did not know whether I would be on their land or not. I heard that they owned land in there somewhere.

Q. Who was it you heard owned land in there?

A. I heard that Cobb and Bartlett owned land in there somewhere. I did not know whether they owned the land the house was on or not. They came up and said it was on their land.

Q. There was no talk about how long you was going to stay there?

A. No, sir.

Q. You understood that you had a right to stay there just as long as you had a mind to?

A. And he told me to stay there until he told me to get off.

Q. There was, then, nothing decided, then, in that talk but the fact that you were to pay any compensation for the privilege of staying there in that house?

A. No, sir.

Q. Who was that man that came to you once on a time and said that he had a lease; Jones, was it?

Objected to by plaintiffs as hearsay evidence.

Q. I will ask you whether I am mistaken—whether you said in your examination-in-chief that Mr. Jones came to you once and said that he had a lease from somebody else. Did you say anything of that kind in your testimony?

A. I said that Mr. Jones came to me and said that he had a lease for the ground in the second house from where I was—that he had a lease from Mr. Traber.

Q. Was that after you had sold out to Mrs. Street?

A. Yes, sir.

Q. From whom did you buy?

A. I bought from Mr. Wheeler.

Q. Who was he?

A. He kept a grocery store on the corner of Third street.

Q. Well, that was the second house from where you was?

A. It was the third house from the alley south from my house.

Q. About how far south?

A. Probably about two hundred (200) feet or more. I don't know exactly how far it is.

Q. You remained in that house, then, how long?

A. Six or seven months. I don't remember just how long.

Q. You went into it, in your judgement, some two years after you went into the other house?

A. Yes, sir.

Q. You went in 1877 and probably in 1879, when you sold to Mrs. Street. Then you immediately went into this other house, so that no great length of time elapsed. Did you go anywhere else before you moved there?

A. No, sir; that is the first place I went to.

Q. This party was wanting possession of this house—this second house. This man Jones came there and asked you for possession?

510 A. No, sir; he had built a house.

Q. He came and told you that the house he had leased he had leased of Traber?

Objected to as hearsay by the plaintiffs.

A. Yes, sir; he came to me and told me about the lease that he had.

By Mr. FERREY: What is your business, Mr. Alltop?

A. I do teaming when I have work. I am not doing anything just now.

Q. Where do you live?

A. I live in Kansas City, Kans.

Q. Do you sign your name to that lease or did they sign it for you?

A. That is my writing. I don't know whether it was on date of it or not. I won't be positive whether it was on the date or not.

Q. When did you say that you first moved your house up there?

A. I think it was in July, 1877.

Q. You moved your house up there in July, 1877?

A. I don't know which month it was, either June or July.

Q. Where it had been before that; where was the house you lived in before?

A. It was down by the—on the banks of the Kaw river.

Q. How long had you been there before Bartlett came there to see you about it?

A. I think I must have been there a month or two. I am not positive just how long.

Q. Was that lease when it was brought to you signed by the other parties?

A. I think it was.

Q. Did you have a duplicate of it; did you have any copy of it?

A. No, sir; I had no copy.

Q. You never paid any rent to anybody?

A. No, sir.

Q. When did you move away from there?

A. In 1879 I think it was.

Q. What month in 1879?

A. I can't say. I don't know what month it was.

Q. Can you tell about the month it was?

A. I think it was in September.

Q. September, 1879?

A. I think it was.

Q. Where did you go to from there?

A. I moved in a house south of that, supposed to be—I don't know it was—on the same land.

Q. Who did you say built that house?

A. Wm. Jones.

Q. Did you pay any rent for that to anybody?

A. No, sir.

Q. Did you buy the house?

A. I first rented it and then bought it.

Q. Did you rent it from Jones?

A. I rented it from Wheeler.

Q. What rent did you pay Wheeler for it?

A. I think four dollars ($4.00) a month.

Q. When did you leave that property?

A. I lived there about seven (7) months. I don't know just what time it was when I left there.

Q. When did you first learn about this litigation about the property?

A. About when did I know that they owned that land in there?

Q. When did you first know about this litigation about this property?

A. Well, I think the first I knowed of it was that summer.

Q. What summer?

A. That summer I moved into Jones' house.

Q. Was that in 1879?

511 A. I don't know whether it was in 1879 or not.

Q. Well, you said 1879 awhile ago.

A. I think it was. I don't know whether it was in 1879 or not.

Q. Well, you said in 1879 awhile ago.

A. I think it was.

Q. From whom did you learn about it?

A. I heard parties talking about it. I don't know who they were.

Q. Who heard what parties?

A. Outsiders.

Q. Well, whom?

A. I can't say.

Q. You don't remember of anybody stating anything about any litigation over this property?

A. No, sir; I don't.

Q. Did you have any talk with Mr. Mason about this litigation in the summer of 1879?

A. Why, Mr. Mason was at my house. That was the same fall I lived in the Jones house, and he wanted a lease for the grounds.

Q. What did he say to you?

A. He wanted to lease it to me.

Q. Just tell what he said.

A. I can't say the words. He wasnted me to give him a writing for me to pay lease to him.

Q. Did he say that he owned it?

A. He said that him and McAlpine owned it.

Q. What did you say?

A. Well, Jones had said that he had lease from——

Q. What did you say?

A. I was going to tell you. Jones had said that he had lease from Traber, and that I had come in under him, and that Jones had said I would not have to pay any lease.

Q. Jones was leasing from Traber and you were renting under Jones?

A. I was running under his say-so. He said the lease was good for a year.

Q. Have you had any talk with Mr. Mason or McAlpine about this suit?

A. They was talking to me once or twice.

Q. When was the first?

A. Probably a year ago. I don't just remember just how long it was.

Q. Well, about how long, as well as you can rememnner?

A. It has been about two years.

Q. Was it about this present suit?

A. Yes, sir.

Q. What did they say?

A. They wanted me to show what claim I had, and that I was on their ground, and so on.

Q. Did you have any talk with either Mr. Mason or Mr. McAlpine about what you was going to testify to in this case?

A. Yes, sir; we talked about it.

Q. What was the conversation?

A. Well, I don't know what it was. I can't tell you.

Q. Have you talked any with Mr. Mason or Mr. McAlpine this summer about this case?

A. No, sir; I have not seen them since about a year ago.

Q. Then you had no conversation this year about it?

A. No, sir.

Q. How did you happen to come here this day?

A. A gentleman told me to come over; that they wanted to see me.

Q. What gentleman?

512 A. I don't know his name.

Q. You don't know what his name is? Was it Mr. Garrett?

A. Yes, sir; that is the gentleman.

Q. When did he tell you that?

A. I seen him this morning, and he told me to come up here.

Q. Was that the first time you were informed that you were wanted here?

A. Yes, sir; that is the first time that I knew anything about it.

Q. Have you had any talk with Mason or McAlpine to-day about this case?

A. Nothing, only what was said here.

Q. I mean any private conversation. I mean before you were sworn.

A. No, sir; I just bid them the time of day. That is all.

Q. Did Mr. McAlpine come and ask you to testify in this case?

A. He did.

Q. Any time this year?

A. No, sir; I have not seen him for a year.

Q. Were you a witness in the case of Tourtelott against Wilkins and others?

A. No, sir.

Q. Did you know about the case?

A. I did not know anything about the case. I heard about the case. I heard about it, but I did not know I was going to be a witness.

Q. Have you had any talk with Mason or McAlpine about that case?

A. I don't know whether that was the case when we was talking or not. I know when a case came up. I do not know whether it was that case or not. They spoke to me and wanted to know where I was living, and so on.

Q. You never paid any rent to McAlpine or Mason?

A. No, sir.

Redirect examination:

Q. Who was this man Wheeler you spoke of?

A. A grocery-keeper that bought the house of Mr. Jones—W. M. Jones.

Q. I suppose for some debt that Jones owned?

A. Yes; Jones owed him a grocery bill.

Q. Mr. Jones moved out and turned the house over to him?
A. That was the way I suppose it was.
Q. How long did Wheeler hold it in that way?
A. I don't know how long he held it in that way.
Q. Probably not long?
A. I can't say.
Q. You rented it at first of Wheeler?
A. Yes, sir.
Q. Do you know how long Jones had been gone out from there?
A. No, sir.
Q. Do you know who built the house?
A. Yes, sir. Jones built the house.
Q. Did you see him build it?
A. Yes, sir; I seen him build it. I don't think I moved out until Jones moved away. I know that their family lived in here before I got the house.
Q. Do you know what year the house was built?
A. It must have been built in 1878.
Q. You were working then for Tourtelott?
A. Yes, sir; I worked for Armours. I worked under Tourtelott. I worked for the company.
Q. You signed that lease about the time of its execution?
A. I signed that lease just after I went into the house; a month or two. I don't just remember just how long.
513 Q. This W. M. Jones, the colored man, lived on the last house that fronts on the east side of Wood street extended?
A. It fronts west.
Q. About how far from the end of Wood street; about how many feet running along there?
A. I think about fifteen (15) feet; I don't know; perhaps not that much.
Q. Is it not pretty much near the edge of the street?
A. It is pretty near the edge of the street. I thought it stood back, but it is not over ten (10) feet from the edge.
Q. About how long is the house—14 by 24?
—. ——.
Q. One-story house?
A. Yes, sir.

GEORGE ALLTOP.

Mr. MASON: We now offer in evidence the deposition of Dr. George B. Wood from the deposition record, at pages 94 to 102, inclusive, and also pages 112 to 115, inclusive.

Objected to by plaintiffs because incompetent, irrelevant, and immaterial.

Which objection was by the court sustained, and to which ruling of the court the defendants at the time duly excepted.

Said deposition from 94–102 is in words and figures as follows, to wit:

Geo. B. Woods.

Q. State your name, age, residence, and occupation.

A. George B. Woods: I will be sixty-one (61) years old next Christmas; reside in Wyandotte city, Kansas; occupation, physician and surgeon.

Q. State whether or not you were acquainted with David E. James and Joseph E. Snyder in their lifetime.

A. I was.

Q. State, Doctor, whether or not you had any knowledge of those parties in interest or interests they claimed in certain lands in the town site of Kansas City, Kansas; and, if so, you can state how those interests arose.

A. I had.

Q. State, Doctor, if you know what interests Joseph E. Snyder had in those lands; state succinctly how it arose and the various transactions between James and Snyder and others with reference to that land.

A. During the year 1857—in the fall of 1857 or 1858 and up to July, 1859—Mr. James received at various times monies and other property in consideration from Mr. Snyder—Mr. Joseph E. Snyder—for which he was to give said Snyder land interests in the bottom of what is known as Armstrong's flat, or reserve number one (1). That promises on the part of Mr. James was based on a suit by James and others for the recovery of a part or the whole of this reserve number one (1), which was then in suit, or in court rather, Mr. James and others being parties on one side and the Armstrong on the other as the opposite party. In July, 1859, a compromise was made between the parties in suit, and a portion of this reserve number one (1) was deeded to David E. James in common; his interests were in common, undivided. To carry out that agreement with Mr. Snyder in 1864, as I remember, or rather before that time (I am a little too fast), he had agreed to give Mr. Snyder 10 (ten) acres of land on the State line near now where the old State Line house is located—that is, at or near the present bridge—Kansas City bridge—the Kansas Pacific Railroad Company's bridge in the bottom of this same land. Time passed on and in 1864 Mr. Snyder desirous of having (having had some papers to this ten (10)
514 acres—I think he had some sort of written instrument for the 10 acres)—he was desirous of having something more definite than what he had at that time, and he procured a blank deed from Mr. James for six (6) acres of land to be located on the Missouri river and the State line, to be located by Snyder, of course. The deed was blank as to description and grantee. This deed was not filled up for this six (6) acres—that is, as to description and grantee. That was not put in the deed until the fall of 1868; I think either in October or November. In August, 1868, Mr. James made a deed of ten (10) acres of land to James F. Joy and company in consideration for riprapping the river bank between the mouth of the Kaw river and the State line. At this time the lands had

been divided on partition to the various owners, which was, I think in 1867. I think the partition was made then. After the partition in 1867, I think in August, 1868, this deed to James F. Joy and company was made by David E. James and placed in escrow. Subsequent to that time Mr. Snyder, Joseph E. Snyder, filled in the description in the deed heretofore mentioned—the blank deed of 1864—as to the description and grantee. He filled it to himself as grantee. I suggested to him that it would complicate matters if he filled in the deed. Mr. James was absent in Michigan and Mr. Snyder consulted me about this. He said that he was anxious to have his interests properly saved to him, and therefore he intended to fill the deed. I remonstrated with him and told him that another deed had been made to James F. Joy and company and deposited in escrow, and that his deed took in a portion of the land deeded to James F. Joy and company by James, and would thereby complicate matters and create difficulty and perhaps retard the riprapping of the river bank and give a great deal of trouble. He, however, did not take my advice. I advised him to wait until Mr. James came home before he done anything. He refused to do so, and a short time afterwards filled in the deed and had it placed on record. In order to deter him from doing this I suggested that he had been in bankruptcy and had been discharged as a bankrupt, and that the deed would show that it was dated in 1864, and that if he placed it on record it would make it public, and that as no such property had been scheduled when he was in bankruptcy that he would place himself in a very awkward and dangerous position, dangerous for concealing property which might be alleged that he fraudulently concealed and probably wilfully done so, but he proceeded to fill out the deed and placed it on record. I immediately communicated with Mr. James in relation to the matter by letter so as to have him well informed as to the complications which had been brought about by the actions of Mr. Snyder in filling up the deed. Mr. James soon after, in the early part of the winter or some time in the winter, returned here and saw Mr. Snyder, and was very indignant at the course that had been taken, and proceeded as soon as possible to make a change in the title of the property to the land that Mr. Snyder had *been* by deed filled up to himself, which was six (6) acres. If I recollect it was some time, perhaps a few weeks—many days, at least—before they had come to a final agreement between James and Snyder in relation to this matter, as to how it should be done to remove the complication that existed. It was agreed between them that Mr. Snyder should have four (4) acres back from the Missouri river, which would be in a southwesterly direction, in consideration of the six (6) acres, and Mr. James a deed for four (4) acres to Mr. Snyder. I think it was all done within a few days or two. This six acres was deeded by Mr. Snyder back to Mr. James and the
515 four (4) acres by Mr. James to Mr. Snyder. I think it was in April, 1869. I think the deed to the six (6) acres was deeded by Mr. Snyder to Mr. James on the 12th day of April, 1869, and perhaps the next day the deed for the four (4) acres was made to

Mr. Snyder by Mr. James. I don't think these points were asked me or brought out before. I don't think they were except as to the succession of title one from another. I stated, I think, that the six (6) acres above alluded to on the Missouri river was received in lieu of the ten (10) acres above alluded to on the State line, and the four acres alluded to was received in lieu of the (6) acres tract above alluded to and situated on the Missouri river; that it was supposed that this transaction between Snyder and James in April, 1869, removed all complication and placed everything all right, and Snyder was satisfied and provided for.

Q. Do you know whether or not Mr. Snyder had placed the deed to this six (6) acres tract on record or not?

A. Yes, sir; he had put it in record. As I remarked before, he said that he intended to have it recorded, and I remonstrated with him and told him that it placed him in an awkward position if it became public that he owned that property and that it never was scheduled and that he came into possession of the property in 1864, as that was the date of the deed.

Q. Did you see that deed, Doctor?

A. Yes, sir; I saw the deed.

Q. Was it signed by David E. James and wife and acknowledged?

A. Yes, sir; I think it was. Yes, sir; I saw the deed before it was filled up and I saw it afterwards. I know that the deed was there and why it was placed there.

Q. You were intimately acquainted about that time with both Mr. James and Mr. Snyder and their transactions and were interested in having this riprapping go on and not have any failure of the contract *with* that James made with Joy?

A. Yes, sir.

Q. Was there any other additional consideration, Doctor, for this four (4) acre deed except simply the change so as to have the Snyder interest located elsewhere than on the Joy tract?

Q. Was there any other consideration for it?

A. None that I know of?

Q. I believe that you were a witness to the execution of this four (4) acre deed and——

A. Yes, sir; I believe I did.

Q. What was Snyder's peculiar means and circumstances at that time? Was it such that he was able to pay anything for the land?

A. When do you allude to?

Q. In 1869; *in* April 13th.

A. Mr. Snyder I don't think had any means of his own at that time except this property.

Q. This deed of 1864 *which* he afterwards filled in with the description of six (6) acres of land, did he?

A. Yes, sir. In the event of any accident which should happen to Mr. James or his sudden death it was placed in his hands to protect Snyder, so that he might fill it out whenever he thought it necsary to do so for his own protection.

Q. That he might fill in the name of himself or of any other person as grantee with the description of six (6) acres?

A. I think he could have filled in the description and the name of Mr. Snyder as grantee. I never heard anybody else talked of.

516 Q. State, if you know, any particular reason why Mr. Snyder wished to protect himself in that way, why that transaction was had in that manner.

A. Well, for fear of Mr. James' sudden death.

Q. Mr. James was not in good health; was that the reason why he feared his sudden death?

A. Well, no; his habits were irregular; I don't care to speak further about it.

Q. This deeding back of the six (6) acres to Mr. James and the deed by Mr. James to Mr. Snyder for the four (4) acres were one transaction; they were simultaneous and all grew out of one contract?

A. That is my understanding.

Q. Do you know that the four-acre deed was delivered by Mr. James to Mr. Snyder?

A. I think it was.

Q. Do you know whether the nominal consideration of one dollar ($1.00) was ever paid or not?

A. It expressed a consideration of one dollar ($1.00), but the real consideration was this six (6) acres tract deeded back to and the four (4) acre tract deeded to him.

Q. Then there was not any other that you know of?

A. No, sir; not that I know of. It is the usual mode of expressing considerations of that kind, just to put in a consideration of one dollar ($1.00).

Q. Do you recollect of being present when these deeds from Snyder and James was passed; was you present at the act of their passage?

A. I think I was.

—. Can you state now or give any of the conversation or the substance of the conversation between James and Snyder at the time of the executing and passing of those deeds?

A. I can state that it was agreed between those parties that the transaction should be had that I have before referred to, the deed of this six (6) acres by Mr. Snyder to Mr. James and of Mr. James' deed to Mr. Snyder of the four (4) acres.

Q. You were interested in having that transaction consummated and speak from your own actual personal knowledge?

A. Yes, sir; I was in several times when they were discussing these propositions and trying to agree and arrange the matter, and that was the subject of the conversation until they had come to an agreement.

Q. By the way, do you know the date of the deeds that were executed to Joy and James and others?

A. I think August, 1868, I made a deed, and about the same time the others were made. The deeds were deposited in escrow in the District National Bank of Kansas City, and, as I remarked before, the deed which Mr. Snyder filled up in the fall of 1868, subsequent

to these deeds made to James F. Joy and company, took in a part of the land that was in the escrow deeds, and hence the complication.

Q. You may state when Mr. Joy commenced to riprap there, and what he did at that time towards riprapping.

A. It was commenced in the winter of 1868 and 1869; perhaps in the winter of 1869 or early in the spring, is my recollection.

Q. Did he take possession of the land that had been deeded to him by you and others?

A. I don't know that he went onto the claim; he had the deeds there and he knew where the land was located by its bank; at least he riprapped that part in the winter, I think in February, 1869.

Q. When did he finish riprapping?

A. I think in the early part of 1869; in the spring. It
517 was an extensive job and took several months to finish it. There were some breaks in it that they were compelled to fill up from time to time during that year.

Q. Do you recollect of certain mortgages or liens to Welland and a lien or mortgage to Armstrong of fifty dollars ($50.00) per acre being mentioned in that four (4) acre deed?

A. Yes, sir.

Q. Why was that all done?

A. Well, in the compromise with Mr. Armstrong parties in interest, Mr. James being one of them, they agrees to pay fifty dollars ($50.00) an acre for the land received from them from Mr. Armstrong as one of the conditions of the compromise. This fifty dollars ($50.00) per acre was required to be paid by Mr. Snyder.

Q. They were mentioned, then, in the transfer of those liens from the location of 1864 to the four (4) acre tract deeded in 1869, were they?

A. As far as the transfer of the liens was concerned I know nothing about that, but I know that he was required to pay fifty dollars ($50.00) an acre for the four (4) acres; that was Mr. James' object when he deeded this land to Snyder, to have Mr. Snyder assume the obligations of fifty dollars ($50.00) on the deeds for the land.

Q. That was to attach to the lands deeded to Mr. Snyder?

A. Yes, sir.

Q. Can you give us a description of this four (4) acre tract?

A. No, sir; I cannot.

Q. Can you tell when and where it was located? Give it as accurately as you can.

A. I can merely say this: that it was somewhere not far from Fowler's packing-house and towards the Kansas river or right in that vicinity, south or southwest of James street. I cannot describe the land in any other manner at all. I might point out the allotment to Mr. James.

Q. At the time this blank deed of 1864 was filled in by Mr. Snyder, in 1868, had any of the lands described washed away, if you know, Dr.?

A. Yes, sir; there had some.

Q. How much of the land destroyed had washed away?

A. I cannot tell you, sir.

A. Give it approximately, Doctor—a general idea.

A. Well, I cannot tell you without getting the entire wash and the width of this land on the river.

Q. State whether or not there had been considerable wash there.

A. There had been some wash there.

Q. Well, when was this wash?

A. Well, there was some wash in the spring of 1868. We had high water then; the river was quite high, and there was some falling in of the river bank when the water receded; sometime it would fall in when there were large trees hanging over the bank; when the water receded, then the bank would fall off or drop off. The question about how much wash, why, I cannot state, of course, as to that particular piece. I have stated that Mr. Snyder was to fill in the deed with a description of six (6) acres of land. Yes, sir; I stated that he was to fill in the description of six (6) acres; that was the agreement, that he should have six (6) acres; it was in accordance with the agreement.

Q. Did he or did he not state to you, Doctor, how much land he had located in that deed?

A. That was my understanding of the number of acres; he showed me the deed that he had filed.

Q. Did he describe this six (6) acres?

518 A. Yes, sir; that is my recollection.

Q. Do you know who took possession of the four (4) acres described in the deed after the bankrupt sale?

A. Only from hearsay, if you allude to the purchase.

Q. I mean after the bankrupt sale.

A. I don't remember when the bankrupt sale was, except that he made it appear by filing the deed in the fall of 1868 that he owned the land in 1864; that was what I was trying to get through his thick head, so as not to cause a complication.

Q. Examine that deed and state whether that is a copy of the four (4) acre deed mentioned, which you witnesses the execution and delivery, and state whether that is a correct copy of that four-acre deed.

A. Yes, sir; I believe it to be.

Q. You are willing to have that attached to your deposition and have it marked "Exhibit No. 5"?

A. I am simply stating that I believe it is. I believe it to be a correct copy. I can't say that it contains the number of acres by any description. It contains the number of acres and the amount to be paid to Mr. Armstrong, fifty dollars ($50.00) per acre, and the taxes. I am satisfied about those two matters. I can't state that it is a true copy; that would be placing it absolutely so far as I can go. I am willing to state that I believe it to be a copy of the deed.

To the introduction of a copy of the deed the respondents object for the reason that it is incompetent, irrelevant, and immaterial.

Q. You witnessed the execution and delivery of but one deed containing four (4) acres of land?

A. Yes, sir; that is all.

Q. Just state what tract of land that is; whether that is the tract described in the four-acre deed.

A. My impression is that this point here, I think that this is the tract here, according to my notion. It ran through here, and runing through here to the river it washed out some and cut this out.

Q. Could you in any way describe this four (4) acre tract of land?

A. No, sir; I cannot describe it in any other way. Here is this ten (10) acres here running here up to this point. The Joy land ran to the river.

Q. Which is the four acres?

A. The four (4) acres is just beyond that; I am inclined to think that is *is* the tract here. There is the tract marked Covv and Bartlett. It is my notion that it is on the extreme end of that.

—. Just take the map, this particular map, and identify this four (4) acre tract.

A. According to my notion it joins the allotment in the partition case to Thomas Swope. Now, if that is the Swope this is the tract; then that joins it. I can't do more than that.

Q. Is it not your impression that the four (4) acre tract that is marked on the map Cobb and Bartlett?

A. I think that is the piece that ran to the river and the four (4) acres that was allotted in the deed to Mr. Snyder was back southwest on James street.

Q. Well, is it or is it not a fact that the four (4) acres or your notion that this is the tract marked Cobb and Bartlett?

Defendants object to witness' notion.

A. My recollection is that it was on the extreme end of this. It was right at the extreme northwest part of it. It is my impression that the land was located about here, where Cobb and Bartlett is represented on the map as joining Thomas Swope.

519 Q. Do you recollect that it joins the tract thus marked? Between what streets did this four (4) acre tract lie?

A. My recollection is, between Armstrong and James street; Wood street had not gone through here yet.

Plaintiffs here offer the map in evidence, marked Exhibit 6, as a part of the testimony of Dr. Woods.

Objected to as incompetent, irrelevant, and immaterial.

Cross-examination:

By Mr. TRABER: The original six (6) acre tract, deeded by James to Snyder, as I understand you, was bounded on the end by the Missouri river, and on the side next to the city of Wyandotte by the Thomas Swope tract. Is that right?

A. I think it is.

Q. The original six (6) acres was a parallel*l*ogram, having a width of about three hundred (300) feet, was it not?

A. I think that is the shape of it.

A. And ran back southwesterly from the Missouri river for quantity?

A. Yes, sir.

Q. That was the property and the only property which Mr. Snyder had in that vicinity at the time of this first discharge under the bankrupt law, was it not?

A. Yes, sir; I mean in the sense I have heretofore described.

Q. At the time of his discharge he owned no other, did he?

A. No, sir; not to my knowledge.

Q. Now, what part of that six (6) acres, if any of it, was comprosed in the deed subsequently made by James to Snyder?

A. You have reference to the four (4) acre-?

Q. Yes, sir.

A. If it was that part which was on the southwesterly end of the parallelogram of the six (6) acres.

Q. How much of the six (6) acres?

A. Four (4) acres.

Q. Four (4) acres of the six (6)?

A. He got four (4) acres of the six on the southwesterly end by the deed of James to him.

Q. He did not get any ground outside of this six (6) acres at all by this last deed?

A. No, sir; not to my knowledge; none was talked of.

Q. All the talk was about four (4) acres out of the original six (6)?

A. Yes, sir.

Q. So, if there was any property conveyed by James to Snyder outside of that four (4) acres transferred you don't know anything about it?

A. No, sir; I have no knowledge of it.

Q. You don't pretend to know, do you, Doctor, how many acres or how many feet of that parallelogram was washed away prior to Joy's purchase of James?

A. No; I say, as I have said before, some of it was washed away; how much I don't know. There may have been a half acre or an acre that washed away; I can't fix any amount.

Q. You are very clear, are you, Doctor, that there could not have been any other land spoken of except the four (4) acres out of the original six (6) acres?

A. I never, in my presence.

Q. If there was any ground other than the six (6) acres, other than part of the six (6) acres conveyed in that four (4) acres tract, you don't know anything about the agreement between them?

A. I don't know anything at all in connection with any
520 lands — property except the four (4) acres; the four (4) acres that were a part of the six (6) acres.

Q. And included in it?

A. Yes, sir; that came out of the six (6) acres.

Q. If there was any grounds or any agreement—I mean between James and Snyder—that took in any ground outside of this six (6) acres, you have no knowledge of it?

A. I have none at all.

Redirect examination:

Q. You don't mean to say that this four (4) acres tract was a part of this six (6) acres tract?

A. I mean to say just this exactly: That Mr. Snyder had this six (6) acre tract in the way I mentioned before, and that Mr. Snyder deeded this six (6) acre tract back to Mr. James, and in lieu of which he took four (4) acres, as I have described—this six (6) acres described, which was this piece on the Missouri river, and was a part of the land deeded to Joy and company by James and others, and was executed to Joy and company as part consideration for riprapping that portion of the river; that was the agreement and the talk and all of *of* it on that point, and hence the reason for receiving the four (4) acres instead of the six acres.

Q. As a matter of fact, Doctor, do you know where the description of this (6) acre tract, as it was filled up by Mr. Snyder, would carry the land with reference to the river?

A. No, sir; my only talk with regard to that is my knowledge of the transaction as it was agreed upon, as the records will show.

Q. Do you or not know that the description extended the land to what was then the river at that time?

A. I don't know it, only from hearsay. I heard some things said about a survey there of this same land and that it took in water instead of land. I simply speak, Mr. Cree, of my knowledge of the transaction and what the papers show. I never measured the land, and don't know anything about that.

Q. You can't give a description of the lands—in other words, by metes and bounds—that is, of this Snyder six (6) acre tract?

A. I can't give it, only on one side. I am satisfied that it joins the Swope lands.

Q. Can you give the description by metes and bounds?

A. No, sir; not satisfactorily, to either the plaintiff or the defendant.

Q. Can you identify the copy of the deed at page 15 of Book N?

Objected to by the defendant- as incompetent.

Q. What deed is it?

A. Well, it is a copy of a deed for the four (4) acres from James to Joseph E. Snyder, which is now the subject of litigation.

Q. It is the deed delivered to Snyder by James on that day?

A. Yes, sir; I think I have stated that.

Further cross-examination:

Q. Where did you find the deed which you have identified?

A. I find it in what purports to be a record of deeds.

Q. Can you tell from that description whether that is the land in controversy or not?

A. No, sir; I can't tell anything about that.

Q. You don't know whether it is properly recorded or not?

A. No; but the deed recites a conveyance from David E. James and wife to Joseph E. Snyder for four (4) acres of land.

Q. You simply state that from what the record contains?
A. No, sir; I recollect that myself.
Q. The deed that you have examined is what purport- to
521 be a record of a deed?
A. Yes, sir.
Q. It is not the original?
A. No, sir.
Q. You don't know whether there is any mistake in it or not?
A. No, sir; I don't.
Q. You just simply see your name signed there as a witness?
A. Yes, sir; to what purports to be a deed to four acres and the matters contained therein. I don't pretend to say that it is correct. I only say what it purports to be—a deed for four (4) acres of land. My belief is that it is a copy of that deed; it may not be a true copy. That I do not pretend to be able to state.

GEO. B. WOOD.

(Here follows map marked p. 522.)

523 Mr. MASON: "We now offer the supplemental deposition of Dr. George B. Wood, taken on the 27th day of October, 1884.

I will state that this evidence tends to show that the property sold under the bankrupt sale was in fact bankrupt assets and belonged to the bankrupt, Snyder, before the petition in bankruptcy was filed as a matter of fact."

Objected to by plaintiffs because incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which ruling of the court the defendants at the time duly excepted.

Said deposition is in words and figures as follows, to wit:

4668. Opened by order of court May 25th, 1885.
Filed Jan'y 13th, 1885.

A. S. THOMAS, *Clerk.*

In the Circuit Court of the United States within and for the State of Kansas.

N. MCALPINE *et al.*
vs.
G. W. TOURTELOTTE *et al.* } No. 4668.

Be it remembered that on the 27th day of October, 1884, I ordered a continuance of the examination of witnesses in this cause until October 31st, 1884, and for the purpose of allowing the completion of the testimony previously taken to be signed by the respective witnesses, and that notice be given to respondents in said cause accordingly; that said notice so given is attached hereto and made a part of this certificate. The complainants appeared by their counsel, J. M. Mason, and the respondents by their counsel, Goodin

and Kepplinger and Pratt, Brumback and Ferrey, for the purpose of hearing said testimony read and witnessing the signing of the same by the respective witnesses and for no other purpose; and I also certify that, in accordance with the notice hereto attached, I did examine witnesses for complainants, namely, J. M. Mason, Mrs. Cornelia Street, and Dr. Geo. B. Wood, who, being by me first duly sworn according to law, testified as their testimony is attached hereto and signed by them in my presence; that on the 3rd day of November, 1884, I ordered that respondents be given reasonable notice of the completion of said testimony of the witnesses above named as taken down by me on the 31st of October and the 1st day of November, 1884, and set the time for the signing of said testimony on the 5th day of November, 1884, at 2 o'clock p. m. of said day.

Said last-mentioned notice as given in here is hereby attached and made a part of this certificate pursuant to said last-mentioned notice. The testimony, reduced to writing by me, was on the 5th day of November, 1884, at the time per day and at the place mentioned in the said notice read to the witnesses respectively in my presence and respectively signed.

Witness my hand this 5th day of November, A. D. 1884.

S. W. BLODGETT, *Examiner.*

Notice to Take Depositions.

STATE OF KANSAS, } *ss:*
County of ——, }

In the Circuit Court of the United States, District *Court* of Kansas.

NICHOLAS MCALPINE *et al.*, Plaintiffs,
vs.
GEO. W. TOURTELOTT *et al.*, TERESA SNYDER *et al.*, Defendants.

Notice to take depositions.

524 To all of the defendants in above-entitled cause and their attorneys of record:

You are hereby notified that the testimony of the witnesses heretofore examined in this cause and other witness- to be used as evidence on the trial of the above-entitled action in behalf of the complainants will be taken and completed at the office of James M. Mason, Wyandotte City, Kansas, at 10 o'clock a. m., before Samuel W. Blodgett, examiner of said court, pursuant to a continuance by order of said examiner, in the county of Wyandotte, State of Kansas, on Friday, the 31st day of October, 1884, between the hours of eight (8) o'clock a. m. and six (6) o'clock p. m., and that the taking of the same will be adjourned from day to day between the same hours until said deposition- are complete-.

JAMES M. MASON,
Attorney for Complainants.

Service of the above notice hereby acknowledged this — day of ——, 18—.

STATE OF KANSAS, *Wyandotte County,* } ss:

James M. Mason, being duly sworn, deposes and says that on the 27th day of October, 1884, he served a true copy of this notice on Pratt, Brumback and Ferrey and on Lafayette Traber, attorneys for defendants, said Traber representing himself and Welland in this cause, and said Pratt, Brumback and Ferrey representing Geo. W. Tourtelott and said Traber.

I also served notice — the said notice this 28th day of October, 1884, on Goodin and Kepplinger and Byron Sherry.

JAMES M. MASON.

Subscribed and sworn to before me this 1st day of December, 1884.

My commission expires April 5th, 1887.

JOHN S. COX, [SEAL.]
Notary Public.

Notice to Take Deposition-.

STATE OF KANSAS, —— *County,* } ss:

In the Circuit Court of the United States for the District of Kansas.

NICHOLAS MCALPINE *et al.*, JAMES M. MASON, and SOPHIA A. COBB, Plaintiffs,
vs.
GEO. W. TOURTELOTT, GEORGE P. ALLCUTT, LAFAYETTE TRABER, Jos. L. Norman, C. F. Welland, Frank Boyle, Widow Mary Boyle, Alexander Boyle, Jessy Boyle, Daisey Boyle, Teresa Snyder, James D. Snyder, Eugene Snyder, Fred Snyder, Caspar Snyder, Heirs-at-Law of Joseph E. Snyder, Respondents.

To above-named defendants and their attorneys of record:

You are hereby notified that the testimony of James M. Mason, Dr. Geo. B. Wood, and Cornelia Street and other witnesses to be used as evidence on the trial of the above-entitled action in the behalf of the complainants will be completed at the office of James M. Mason, the corner of 5th stre-t and Minnesota avenue, Wyandotte City, Kansas, in the county of Wyandotte, State of Kansas, on Wednesday, the 5th day of November, 1884, between the hours of 2 o'clock p. m. and six (6) o'clock p. m., and the taking of the same will be adjourned from day to day between the same hours until said testimony is completed, and at the same time and place Dr. Geo. B. Wood will be further examined concerning the time when the washing took place on the river front of the six acres mentioned in the testimony.

JAMES M. MASON,
Attorney for Complainants.

525 STATE OF KANSAS, } ss:
County of Wyandotte, }

James M. Mason, of lawful age, being duly sworn, deposes and says that on the 4th day of November, 1884, and before 12 o'clock and 15 minutes of that day he served a true copy of this notice on the firm of Pratt, Brumback and Ferrey, on Lafayette Traber and John R. Goodwin, representing defendants in this cause as attorneys therein.

JAMES M. MASON.

Subscribed and sworn to before me this 4th day of November, 1884.

My commission expires April 5th, 1887.

JNO. S. COX,
Notary Public.

GEO. B. WOOD, being called as a witness on the part of the complainants and being duly sworn, testified as follows:

Q. You have stated in your testimony that Snyder located to himself six (6) acres of land in the form of a parallelogram with three hundred (300) feet frontage on the Missouri river running back southwardly for quantity.

A. No; I did not say three hundred (300) feet; I said about three hundred (300) feet; to be positive about that I do not.

Q. Now, at the time he made the location he did in 1868, what was the northwardly boundary of that six (6) acres—what would it border on?

A. The agreement between James and Snyder, as before mentioned, is that it should be on the Missouri river and running back towards the Kaw river.

Q. On the right-hand bank of the Missouri river, on the right-hand side as you go down?

A. Yes, sir.

Q. Do you know whether or not any survey was made, Dr.?

A. I only know that he, Snyder, told me that he had it surveyed.

Q. Do you know whether or not he measured from the southwest bank of the Missouri river?

A. I can't state at what point he started, how the lines were run, only as I have heretofore stated in the other examination.

Q. You understood that this six (6) acre tract at the time of its location was bounded on the northeasterly by the right bank of the Missouri river and ran in that shape about three hundred (300) feet wide southwestwardly sufficient to take in six (6) acres of land?

A. I state that I so stated in my former examination.

Q. Do you know how many feet it did run back?

A. No, sir.

Q. Now, that was the way you understood it at the time of the conversation between James, Snyder, and yourself in reference to this removing the Joy's complication as you understood it?

A. That is my understanding.

Q. Do you know whether or not Snyder understood it in that way?

A. He did.

Q. Then Snyder at the time supposed that he was locating for himself six (6) acres of land having for its northeastwardly boundary the southwest banks of the Missouri river?

A. The location of the six (6) acres and also of the four (4) acres was done in accordance with the agreement, as I have heretofore stated.

Q. The deed back by Snyder of April 12th, of 1869, was understood by all parties considered to be the same tract exactly as Snyder had located to himself in the absence of James?

A. If you mean by all parties concerned, so far as James and Snyder was concerned it was so located; I don't know as to other parties concerned.

526 Q. In your former testimony you located the four (4) acres received by J. E. Snyder from James by deed of April 12th, 1869, as between James street and Armstrong street. Now, do you recollect at that time whether Armstrong street was so extended through northward so as then to be the westwardly boundary of this land?

A. I don't think it extended through; if so, I have forgotten it.

Q. When you say Armstrong street you mean Armstrong street extended?

A. I mean the line that would correspond with the north side; I was speaking of Armstrong street to the line.

Q. That it was bounded on the westwardly by a line near Armstrong street extended?

A. Yes, sir; that is what I mean in the answer.

Q. Can you state what is located there as the four (4) acre tract?

Here witness is presented with the map marked Exhibit "7."

A. Well, sir, I think this tract marked Cobb and Bartlett on this map, the southwardly end of this six (6) acre tract, if it be correct here, does not extend quite to the line, as I said before. The six (6) acres which I have heretofore alluded — ran from the right bank of the Missouri river back about three hundred (300) feet wide to near the northwardly line of Armstrong street.

Q. I believe you stated that you did not know the date of Mr. Snyder's discharge in bankruptcy?

A. No, sir; I so stated.

Q. Well, you are willing, Dr., to have this map here made an exhibit in connection with your testimony as designating the Cobb and Bartlett tract?

A. I don't object, except this: that the Cobb and Bartlett tract is

about the location I have heretofore described and as represented on this map.

Offered in evidence and marked Exhibit "7."

GEORGE B. WOOD.

Signed in my presence—
S W. BLODGETT, *Examiner.*

Mr. MASON: "I next offer the deposition of Wm. Glenn, page 103 to 108 of the deposition record. That goes to the fact of the possession of the premises in controversy by the grantors of defendants in a continuous line of title from early spring of 1874 up to 1879."

Objected to by plaintiffs because incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which ruling of the court the defendants at the time duly excepted.

Said deposition is in words and figures as follows, to wit:

WM. GLENN, being called as a witness on the part of the complainants and being duly sworn, testified as follows:

Q. Give your name, age, residence, and occupation.

A. William Glenn; twenty-four (24) years past; I lived at Orbison and Norman ice-house at the present time; I drove an ice wagon this summer.

Q. State if you knew Enos Long and what relation he bears to you.

A. Sir, I know Enos Long; he is my step-father.

Q. State if you know where he lived in 1874.

A. He lived right on James street, or where James street is now; right across from Fowler's; a little west from Fowler's.

Q. Do you know what tract of land?

A. I don't know on what tract of land at all; I can't say.

527 Q. On a tract of land claimed by whom?

A. He paid lease to Cobb and Bartlett, or at least my step-father did.

Q. You live with your step-father's family?

A. Yes, sir.

Q. When did your step-father's family go there to live?

A. Well, we lived there two years—very near two years; I won't say exactly.

Q. Do you recollect when you went there?

A. No, sir; I don't remember the date we went there.

Q. Was it in the year 1874?

A. I don't remember.

Q. You recollect whether it was warm weather or cold weather when you went there?

A. I don't recollect whether it was cold or warm.

Q. Was it in the spring?

A. I think it was in March—yes, sir; it was in the spring.

Q. You lived there, you say, how long?

A. Near two years; I won't be positive, but I think near two (2) years.

Q. When you left there whom did your father transfer to?
A. My father sold to a man by the name of Weisagerman.
Q. Do you know how much ground your step-father had charge of there under Cobb and Bartlett—how many acres?
A. I don't know how many acres.
Q. Do you know where the land went to and how far it ran?
A. I think it ran back as far as Armstrong street.
Q. Westwardly?
A. Yes, sir.
Q. Do you recollect what land was on the north of it? Was a man by the name of Swope living there?
A. Yes, sir; I have heard talk about them, but I don't remember much about them.
Q. You remember that the Swope land was on the north, you say?
A. I think so; yes, sir.
Q. Do you remember what bounded it on the southwardly; do you recollect an alley along there?
A. Yes, sir; I remember something about an alley there.
Q. Do you know whether that alley formed the southwardly boundary?
A. I am not sure; I would not be positive.
Q. What was the easterly boundary; it fronted on what street there?
A. I think James street, but I don't remember. It has been a long time ago since I have been there, and I paid no attention to it since I left there.
Q. Did you ever see Cobb or Bartlett at your father's house?
A. Yes, sir.
Q. What were they doing there?
A. Sometimes they came to collect rents. I understood it that way at the time. I never paid any attention what they were there for.
Q. What did you ever hear your step-father say they were there for.

Objected to by the defendant- as incompetent.

Q. State what conversation they had there, as near as you can recollect.

Objected to by the defendant- as incompetent.

A. I said they came there to collect rents; for something that way. I don't know whether they got it; I can't say.
Q. Did you hear your step-father and Cobb and Bartlett talking about it?
A. Yes, sir; but whether he paid them or not and how much he paid them I can't say.
Q. Did you live at home during all those two years?
528 A. Yes, sir.
Q. And boarded there at home?
A. Yes, sir.

Q. Well, do you recollect a house now as a Mrs. Meadows' house?
A. Yes, sir.
Q. What direction was that house from the house you lived in at the time?
A. I think it was west, towards the river.
Q. As you approached the bridge from Kansas City which way was it?
A. It was next to the bridge.
Q. Towards the bridge?
A. I mean the Wyandotte bridge.
Q. The widow's house, then, would be between this house and the iron bridge?
A. Yes, sir.

Cross-examination:

Q. You was then about fourteen (14) years old?
A. Just about—somewhere near that.
Q. You paid but very little attention to matters of that kind?
A. As a matter of course I would not pay very much attention to such matters that did not interest me.
Q. You don't know the direction with reference to the points of the compass that James street runs, east, west, north, or south?
A. I think it runs east and west, I think; I ain't positive.
Q. Where was this alley that you speak of?
A. It was on the east side of the house.
Q. Which do you call the east side of the house with reference to James street—towards the Kansas river?
A. No, sir; towards Kansas City; that is what I call east. I am not right positive as to where the alley was.
Q. Towards Kansas City; that is where the alley was. I don't think I could state exactly.
Q. Mr. Mason asked you something about it?
A. Yes, sir; he asked me something about the alley, and I told him I knew something about an alley.
Q. Just state in your own way where that alley was from your house.
A. I can't hardly tell. I don't like to say anything. I don't know. I don't like to answer any such question.
Q. Are you certain whether there was an alley there or not?
A. I have heard talk about an alley lots of times.
Q. While you lived there?
A. Yes, sir; and since.
Q. You heard talk about an alley. Did you ever see it?
A. Yes, sir.
Q. How far was it from your house?
A. I can't name the distance exactly.
Q. I don't care whether you come within fifty (50) feet of it; that don't make any difference.
A. Well, it was about twenty (20) feet, anyhow.
Q. Towards Kansas City or the State Line depot?

A. It was back of the house; I don't say what direction it was.
Q. Which way did the house front?
A. Well, it stood several feet off.
Q. Fifty (50) feet?
A. Probably, and maybe not that many.
Q. Something less than fifty (50) feet from James street and towards Kansas City, Kansas. Were the street- in Kansas
529 City, Kansas, laid out at that time?
A. Some of them were; James street for one.
Q. In 1874?
A. I think so. I would not be positive. I know what it is called now. Our houses fronted on that street; the one they call James street.
Q. Was all the ground between your house and the river covered with timber at that time?
A. No, sir; it was not.
Q. Was it all cleared off?
A. There were some two or three streets there.
Q. And lots of old stumps?
A. Yes; there were stumps clean up to the house.
Q. The stumps between you and the Kaw river were pretty thick?
A. I can't say anything about that.
Q. How much land back towards the Kaw river did your step-father occupy?
A. I can't say how much he did occupy.
Q. You can say whether it was fifty (50) feet or how much?
A. No; I don't know how much.
Q. What made you say, then, that it ran back as far as Armstrong?
A. No, sir; I didn't say back to Armstrong street, because I have heard the old man say that was the land run back as far as—I don't say that I knew anything of that kind. I don't know how much ground he occupied. I only heard talk.
Q. Armstrong street runs back to the river?
A. I don't think it run clear back.
Q. You lived next to James street?
A. Yes, sir.
Q. Well, now, Armstrong street did not reach out back of your ground?
A. Right back of our house, do you mean? I guess it was.
Q. Armstrong street was laid out back of your house?
A. As well as I can say; I can't state positively, but I think so.
Q. What reason do you have for thinking so?
A. Because that is my mind, my recollection, that way.
Q. You could look out of the back door of your house toward the river?
A. The back door of our house was not towards the river; the back of it was where Fowler's row now is, across from Armstrong street.
Q. Back towards Fowler's row—you mean the cooper shops?

A. Yes, sir; where the cooper shops is is what I mean exactly.
Q. Did anybody else live on that ground at that time?
A. Yes, sir.
Q. Who?
A. Mrs. Meadows.
Q. Where did she live?
A. She lived next to the river from us, towards the Wyandotte bridge.
Q. On the same piece of ground?
A. I can't say about that.
Q. Did anybody else live on it?
A. I don't remember. Mrs. Meadows lived right next to us, I think.
Q. You don't know the number of lots you leased, called for, or anything about that?
A. No, sir; I don't.
By Judge GOODING: Was the lease spoken of a written lease?
A. I can't tell you.
Q. Did you know Col. Cobb?
A. Yes, sir.
Q. Who was it that came there?
A. Bartlett was the man who came there the most of the time.
Q. Did you know his given name?
530 A. No, sir; I always knew him as Mr. Bartlett.
Q. Was he an old man?
A. A young man or a middle-aged man.
Q. He was not an old man nor was he a young man. Q. About a middle-aged man?
A. About as well as I can recollect.
Q. Do you recollect him now?
A. No, sir; I have not seen him for a long time and I would not have thought of him if you had not mentioned him.
Q. Was he a light-haired man with red whiskers?
A. I can't say.
Q. Now, you have no distinct recollection as to whether it was Cobb or Bartlett who was talking with your step-father.
A. I heard my step-father say when he came that he was Mr. Bartlett, and then, he says, there is Mr. Cobb; but I don't know how he looked or anything about it.
Q. You don't know whether your step-father has a written lease or not?
A. No, sir; I never heard him say.
Q. You didn't hear either one of those gentlemen—Mr. Bartlett or Mr. Cobb—say how much ground they claimed there?
A. No, sir.
Q. You did not hear your step-father say how much ground they claimed?
A. No, sir; I don't know how much he claimed or how much he paid for.
Q. I mean as to how much land Cobb and Bartlett claimed there.
A. I don't know how much.

Q. How did you get the idea? How is the impression made upon your mind that Cobb and Bartlett lands ran back to Armstrong street?

A. I heard my step-father say that it ran back there.

Q. This land you speak of runs back towards by the Kansas river lands. You don't know the direction particularly?

A. No, sir; I never paid much attention to the direction.

Q. Mr. Traber asked you the direction of this alley from the house in which you lived. Can you now state the direction since your recollection has been refreshed—the general direction, if you don't remember the exact direction?

A. Well, I don't remember exactly how the alley laid. I can't say; only I don't remember exactly.

Q. You won't undertake to say at all about this alley—which way it was from your house?

A. I- was more back of the house.

Q. Would that be towards the Kansas river?

A. In one sense it would and in another sense it wouldn't.

Q. The house fronted on James street, and in going out in the rear of the house you would rather look towards the river?

A. In that way if you went out you would look more towards the stock yards?

Q. Well, now, suppose you was at the back part of the house and you were to walk right straight on to the rear of the house—right on—would you not strike the river?

A. Yes, sir; you might hit it up by the railroad bridge. The door is not in the back of the house.

Q. Well, in going right from the rear of the house and just walking straight from the rear of the house and following right — would you reach the Kansas river?

A. Yes; down about Fowler's row. If you walked right straight you would hit it about there.

Q. It has been a long time since you have had your recol-
531 lection refreshed in any manner about these events before you were called upon to testify, or were you called upon today to make a statement to Mr. Mason by which your recollection was refreshed in any manner?

A. Before I came over here?

Q. Have you talked over with Mr. Mason what you knew?

A. Not as to what I would testify to; I never told him what I would say, and he never asked me what I would say.

Q. You don't remember of his asking you anything about this property?

A. Yes, sir; he asked me this, if I remembered anything about what time I lived there, and I told him that I did, and I did not tell him any of the particulars nor he did not ask me.

Q. That is, he asked you about the time you lived there?

A. Yes, sir.

Q. You told him that you lived there two years and was there in 1874?

A. I said I lived there in 1874 and was there nearly two years; that is what I said.

Q. How did you fix the time that you lived there in the year 1874—have you any memorandum in any book or anything of that kind?

A. No, sir; I can recollect such a thing as to where I was in such a year.

Q. Where did you live in 1874?

A. I lived in Moberly, Missouri.

Q. Can you tell where you lived in 1876?

A. I was going to school and was living on James street.

Q. You can remember so well where you were; can you remember what date you left there?

A. The day you mean?

Q. Yes, the day or year.

A. I cannot.

Q. You just fix the year you were there in 1874?

A. I say that I lived there in 1874.

Q. Do you know where you lived in 1875, or did you live there in 1875?

A. I know I lived there two years, and I know I lived there in 1874.

Q. Well, was it in 1874 and 1875 or 1873 and 1874?

A. I think in 1874 and 1875.

Q. You are positive of being there in 1874?

A. Yes, sir; I am sure of it.

Redirect examination:

Q. When you say that the lands run as far back as Armstrong street do you mean that it ran back as far as Armstrong street extended—that is, provided Armstrong street was carried through?

Objected to as suggestive and not what the witness has said.

Q. Do you know where Fowler's cooper shop is?

A. Yes, sir.

Q. Well, is not that about in the way of Armstrong street if it was carried through?

A. Well, the street is not through there.

Q. Is there not up there a large building called Fowler's cooper shops?

A. Yes, sir.

Q. Well, is that about where Armstrong street would run if it was carried through to the cooper shop?

A. I don't think it is.

Q. Well, how far from it is it?

A. I can't say the distance. Armstrong street would be this side of the cooper shops a little. I can't say just how much.

Q. Well, about how much?

A. Well, not much. I can't say how far; somewhere near the cooper's shop.

532 Q. Armstrong street would run somewhere near that shop?

A. Somewhere near the front of the cooper shop, anyhow; it may go back of the cooper shop *o*f it may go this side of the cooper shop; I can't tell.

Q. You are not positive whether the street is run through there or not?

A. No, sir.

Q. Your recollection is the Armstrong street was laid off there in 1877?

A. Yes, sir.

Further cross-examination:

Q. Do you say that Armstrong street was laid off in 1877?

A. I said I did not know whether it was laid out then or not, but I thought so.

Q. Do you remember now?

A. I guess it was; I guess it was, but I can't say positively, but I think so now.

WILLIAM GLENN.

Mr. MASON: We now offer the deposition of J. D. Campbell, found on pages 108 to 111 of the deposition record. This shows the actual possession of defendants through their grantors from the early spring of 1874 and actual occupancy thereon down to 1879. All these depositions offered show that there was actual occupancy on the premises in question from the early spring of 1874 to 1879; from 1874, before this suit in attachment.

Objected to by counsel for plaintiffs for the reason that the same is incompetent, irrelevant, and immaterial; which objection was by the court sustained; to which ruling of the court the defendants at the time duly excepted.

Said deposition is in words and figures following, to wit:

J. T. CAMPBELL being called as a witness on *a* part of the complainants and being duly sworn, testified as follows:

Q. State your name, age, and residence.

A. My name is J. T. Campbell; am fifty-seven (57) years old, and live on Armstrong Point.

Q. Well, how long have you resided in Kansas City, Kansas?

A. About twelve (12) years.

Q. State if you know a certain tract of land lying between James street and Armstrong street, known as the Swope tract and bounded by an alley eighteen (18) feet wide, the land some six hundred (600) feet long, more or less, and about three hundred (300) feet wide.

A. I know where the land is.

Q. Who claimed that land during your recollection?

A. The first man I ever heard claim it was Mr. Bartlett.

Q. When was that?

A. That was in 1873.

Q. State who lived upon that land in the early spring of 1874.
A. Well, sir, Mr. Enos Long lived there.
Q. Where was his house?
Q. His house was down near where the first saloon is now as you go to Kansas City as you cross the bridge.
Q. It was near Mrs. Meadows' house, was it?
A. Yes, sir.
Q. Which way was it from Mrs. Meadows' house?
A. Right near it on James street.
Q. Was it next house to Mrs. Meadows'?
533 A. Yes, sir.
Q. Do you know who Mr. Long leased that ground of at that time?
A. He first built; he did not lease it of anybody. He just squatted as I did, and then afterwards the way it was Mr. Orbson was claiming lease and Mr. Long said to him that he had leased to Cobb and Bartlett, and Mr. Orbison claimed lease of me and I refused to pay him. Then Mr. Bartlett came around to lease to me and I told him that Mr. Orbison claimed rent from me, and Mr. Bartlett said not to pay him a rent, that he did not own the land and had no right to lease it. I said to him that Mr. Long *is* over there is in the same fix as I am. He said, Well, you pay no lease to Mr. Orbison; the land belonged to Mr. Cobb and me. They were both lawyers. I think it passed on for some time and Mr. Long was cutting down a stump that stood right on the land.
Q. When was this talk?
A. That was in the winter of 1873.
Q. Well, after that happened did you and Long lease from Cobb and Bartlett?
A. Yes, sir; after Mr. Long was satisfied that it belonged to Cobb and Bartlett by some other parties after that leasing, then he took a lease from Cobb and Bartlett; at least he told me that he did. Q. Well, he was rather looking after the whole piece of land—the whole square as it lay there.
Q. How much was there of it?
A. I don't know. Probably two or three acres.
Q. Wasn't there four acres?
A. I don't —; there may have been. I don't know. It ran back considerably.
Q. Do you know how far it ran back?
A. It runs down to the cooper shop that Fowler built around on Armstrong street.
Q. The western boundary would be where?
A. Near the cooper shop.
Q. Do you know where the northern line would be?
A. That would be on the Swope line. That would be towards Wyandotte. That would be towards the Long house.
Q. What was the name of the man on the north?
A. I always call him Sotapp.
Q. What would be the eastern boundary of that land?
A. Well, right at James street.

Q. Do you know where the southern boundary would be?

A. It runs right by the Chicago house and then runs down towards the Fowlers' shops.

Q. Is there something there *to* you can call a boundary?

A. Yes, sir; there is an alley there that runs down by the Chicago house and then runs down right towards Fowler's shops.

Q. Is there something there that you can call a boundary?

A. Yes, sir; there is an alley there that runs down by the Chicago house and down past the Methodist church.

Q. Then the southern boundary is this alley?

A. Yes, sir; I have always understood it.

Q. How long did you live there?

A. Long went there in 1873 and stayed there until 187–. He sold out in March, 187–.

Q. Wasn't he there about three (3) years?

A. Yes, sir; about *the* three (3) years.

534 Q. Was it not in the early spring of 1874 that he went there?

A. I think not. He went there—lived there over two years and sold out in March, in 187–.

Q. Don't you recollect the exact date?

A. No, sir; I don't.

Q. Was he living there in the year 1874?

A. Yes, sir; he sold out there in 1875.

Q. You mean in 1876, don't you? He stayed there at least two years?

A. If he built in 1873 he was there in 1874 and 1875; that would be two years.

Q. If he built there in 1874 he would be living there in 1875 and 1876; that makes two years.

A. I am pretty certain that he left there in 1875. I could have told exactly by my lease paper.

Q. You don't pretend to speak as to it certain?

A. No, sir; I don't know for certain.

Q. Might it not have been in 1875 that he left there?

A. I am not certain whether it was or not.

Q. Might it not have been in March, 1876?

A. I am not certain. If I had have known that I would have had to answer that question I would have fetched the lease along.

Q. Well, now, what makes you think that he held under Cobb and Bartlett?

A. Well, I loaned money to pay his rent with, and he told me that he wanted to pay Bartlett, and Bartlett was there.

Q. You don't know whether he paid him or not?

Q. No, sir; but I seen Mr. Bartlett here.

Q. That is what he told you?

A. Yes, sir; that is what he told me he wanted the money for.

Q. You recollect a man by the name of Alltop?

A. Yes, sir.

Q. What relation is he to you?

A. He is a son-in-law of mine.

Q. When did he build a house on that land, if you recollect?
A. Well, I don't know that I could state exactly.
Q. Did he ever build a house upon that land?
A. Yes, sir; he built it himself.
Q. Did he live in it?
A. Yes, sir; he lived in it.
Q. Do you know where it was situated?
A. Yes, sir.
Q. Who afterwards lived in it?
A. Mrs. Street.
Q. That is what is called the Street house?
A. Yes, sir.
Q. How long did Alltop live in it, if you know?
A. He lived in it over two years.
Q. Who succeeded him in the possession of the house?
A. Mrs. Street bought the house.
Q. Where did Alltop go after he sold to Mrs. Street?
A. He went up in Mrs. Meadows' house.
Q. Did you know of his living in a house built by M. W. Jones?
A. Yes, sir; after a few days he bought that house that M. W. Jones built on the south part of the land that is over towards the alley.
Q. Do you know how long Mrs. Street lived in that house?
A. I don't know exactly; probably two, three, or four years.
Q. Your recollection is bad as to dates?
A. My recollection as to dates is not as solid as it might be.
Q. You can recollect events and not dates?
535 A. No, sir; that is something I don't pretend to be able to do. I do not write or figure or make calculations.

No cross-examination.

J. T. CAMPBELL.

It is ordered that this examination be continued until Friday, the 31st day of October, 1884, and for the purpose of allowing the witnesses who have already testified to sign their testimony, and notice will be given to respondents according to this order.

Wyandotte, Kansas, October 27th, 1884.

S. W. BLODGETT, *Examiner.*

The foregoing is the testimony taken under the notice referred to in my certificate and was read and signed in the presence of the parties present on the 31st day of October and the first day of November, 1884, and was signed by the witnesses respectively *at* m*t* presence.

SAMUEL W. BLODGETT, *Examiner.*

Mr. MASON: We next offer the deposition of Henry R. Seegar, from the deposition record, pages 116 to 124.

Plaintiffs objected to the deposition as incompetent, irrelevant, and immaterial. The court sustained the objection; to ruling of the court defendants at the time excepted.

Said deposition is in words and figures as follows, to wit:

In the Circuit Court of the United States in and for the District of Kansas.

NICHOLAS MCALPINE *et al.*, Plaintiffs,
vs.
G. W. TOURTELOTTE *et al.*, Defendants. } No. 4668.

Testimony of Henry R. Seegar.

HENRY R. SEEGAR, being called as a witness on the part of the plaintiff- and being first duly sworn, testified as follows:

Q. Give your name, age, residence, and business.

A. Henry R. Seegar; age, sixty-one (61) next June; I keep a watchmaking shop, and reside in Kansas City, Missouri.

Q. You are the same Henry Seegar who some time ago gave his testimony in a case in which Tourtelott was plaintiff and McAlpine *et al.* were defendants?

A. Yes, sir.

Q. Do you recollect pretty well what you testified to then?

A. Yes, sir.

Q. Did you know Jos. E. Snyder in his lifetime?

A. Yes, sir.

Q. What relation was he to you?

A. He was a brother to my wife.

Q. Where is he now?

A. I don't know; he is dead.

Q. Do you know how long ago he died?

A. It was the second time the yellow fever was in Memphis.

Q. About the year 1879 or somewhere along there?

A. The second time the yellow fever was in Memphis; I never heard exactly the year; I only heard by hearsay.

Q. What business relations did you have any time with Snyder?

A. He acted as agent for me.

536 Q. When?

A. Oh, that was from 1858 up until the war.

Q. Did he act for you after that?

A. No. He worked for me a little while fixing watches.

Q. When was that?

A. It must be about seven (7) years ago—no; nine (9) years ago.

Q. Nine (9) years? That would make it—this is 1884.

A. That would make it 1875.

Q. Do you know his financial condition in 1864?

A. Yes, sir. It was minus.

Q. Did he have any money at that time?

A. I don't know. How could I know? I know that he had some land.

Q. Did he go into bankruptcy?

A. That was before.

Q. That was 1864. Was it not in 1867 that he went into bankruptcy?

A. About that time. I don't know exactly, because I had nothing to do with him at that time; that was when he kept a little store.

Q. Do you know where Daenzer kept his little store?

—. ——.

Q. Do you know who he worked for in 1867?

A. He worked sometimes for himself; he did not work for anybody else except for me here; then he kept a little shop.

Q. What was he doing in 1868?

A. I don't know; you ask me some things I don't care for. I don't know exactly.

Q. Well, did he have some interest in some land in what is called a plat of Kansas City, Kansas, or a portion of it?

A. As much as I know he did.

Q. Now, go on, Mr. Seegar, and state all you know about his acquiring or having or claiming any interest in real estate in Kansas City, Kansas, in the northwesterly part, near the iron bridge or anywhere there, and just give a history of it.

A. The whole history—you have got that.

Q. No; that was for another case; we now want it for this case.

A. From what time; do want it from the first time, from the Government down?

Q. From 1860, from the time of the war, down.

A. All I know is what he told me; that he made a trade with Gladden, who had some acres in the bottom.

Q. Snyder had an undivided interest?

A. It was not paid yet; he had only a title bond; the title bond was made out in my name. I did not know it until I found it afterwards. I found it in my safe; the title bond gave me ten (10) acres of land because he could not keep it in his own name, so he put it in my name.

Q. Why could he not keep it in his own name?

A. Because he was in bankruptcy in 1858.

Q. You mean that he was in debt.

A. That is all I know; that is the way I heard it. I only know by himself.

Q. I will get you to state what became of that ten acres.

A. He let the thing run out—that title bond—and he afterwards made a kind of trade or contract with James, and he got six (6) acres on account of having to pay fifty dollars ($50.00) an acre for every acre to the Armstrongs; that took off four (4) acres and left him six (6).

Q. What then, afterwards, happened?

Defendants objected to the testimony on relation to a contract between Mr. Gladden and Mr. Snyder and the contract between James and Snyder on the ground the contract is the best evidence.

537 Q. Was this contract in writing? Do you know whether the contract between James and Snyder was in writing?

A. I don't know that; I only know that he made a trade with

Gladden. The contract with James—I was not present when he made that.

Q. You don't know whether it was a written or a verbal contract?

A. I can't tell as to that. I never was present.

Q. What became of this six (6) acres? Go on and give a narrative of it.

Objected to by the defendant as hearsay evidence.

Q. Go on and tell what became of this six (6) acres—how they settled it between them.

A. When they commenced riprapping he had to pay his part for the riprapping, and I think they gave him four (4) acres instead of the six (6). Snyder then gave two (2) acres as an assessment for riprapping purposes, so I understood; that is what he told me.

Defendants objects to the answer of witness as hearsay.

Q. Well, now, you know somewhere near where that four (4) acres was located that he finally got?

A. Yes, sir; I know the two acres; a part of the four bought by Traber—not the four (4) acres. I was p-esent when the two acres was surveyed. Traber got the two acres surveyed. How he got it—I expect you know that.

Q. I will show you a map.

A. Those two acres I only know from Traber, not from Snyder, so I don't want any misunderstanding. The two (2) acres Traber got surveyed were not the two acres that went for riprapping.

Q. You know that the two (2) acres was a part of the four (4)?

A. Yes, sir; that is all I know about it—what he told me.

Q. Who told you that?

A. Traber.

Q. The four acres was the result of six (6)?

A. I don't know.

Objected to as leading by the defendants.

A. I don't like to say anything as to the rest, because I have to swear to it. Where the two acres commenced, I don't remember any more how many feet; it must be about forty (40) feet east of Wood street.

Q. The east line of Wood street, you mean, extended? A street don't run up there.

A. I don't know how many feet it was; I know it was run two hundred and ninety-eight (298) feet towards the Kaw river.

Q. That was the two acres that Traber sold off of this four?

A. Yes, sir.

Q. How wide was this tract northerly and southerly?

A. Why, it stands three hundred (300) feet. I got forty (40) feet for my part, Traber got one acre, and the four (4) creditors of Snyder got one acre together. Trefern was the lawyer for Snyder, and he sued him for his fees, for the amount what he owed him for lawyer's fees.

Q. You got forty (40) feet?

A. Yes; it come at last. There was Deitch and Welland and Trefer- and me; we were creditors of Snyder.

Q. Who come to you?

A. Traber told me that he knew that I had a claim against Snyder and to bring my claim in. I told him that I did not care to do that, and he said if I did not that the others would get it, and I told him if that was the case he might take it in, but I would have nothing to pay; that I gets half of my part and he gets the other part; so I don't have to pay anything in the case.

538 Q. You would not have to pay any costs?

A. I did not have to lose anything, so I got forty (40) feet front by two hundred and ninety (290) feet long.

Q. You got a claim forty (40) by two hundred and ninety (290) feet?

A. Yes, sir.

Q. What did you finally sell it for?

A. Fifty dollars ($50.00). It was the meanest place in the whole lot. It was all in the sand.

Q. Who did you sell that to?

A. I do not remember.

Q. It ran in length two hundred and ninety (290) feet?

A. Yes, sir; the whole length of two hundred and ninety (290) feet. It is marked here somewhere.

Q. That two acres that Traber got up that way he took off from the west end of the four (4) acres?

A. He took it off the west end, so he said—I expect made a mistake over there. I don't know how that was, but there was some mistake made in the survey.

Q. Was the four acres taken off of the west end of the six (6)—this four (4) acres that Snyder got there finally?

A. He sued and the United States assessor gave him a deed to four acres and the other two (2) acres he sold to Cobb and Bartlett.

Q. Two (2) acres went for riprapping?

A. No; that is already off.

Q. Well, of the six (6) acres two (2) acres went for riprapping?

A. Yes; of the six two acres went for riprapping.

Q. That was because they had to protect their lands along the river?

A. Where the rest of the lands lays I cannot tell anythiug about that, because I only helped to survey the two acres.

Q. Who do you get those facts from?

A. Of course from Mr. Traber.

Q. Was it Snyder that told you about that?

A. No, sir.

Q. Did Snyder tell you that he got four (4) acres?

A. No, sir; he did not tell me anything more after he left.

Q. What did he tell you before he left?

Objected to by the defendant- as hearsay.

A. He told me that he had to pay two acres for riprapping. He did not tell me where it laid exactly, but I found two acres that

Traber bought, of which I got forty (40) feet when they had it surveyed.

Q. Now, in 1868 do you know what Snyder was doing?

A. I know he went away to Memphis.

Q. Well, before he went.

A. That is a thing I can't tell you about it exactly. I did not mark it down.

Q. When did he go away?

A. He went away the first year I was here on Missouri avenue.

Q. Did he ever have a divorce from his wife?

Objected to by the defendant- as incompetent, irrelevant, and immaterial.

A. He never told me anything about that. I think she was divorced, but I don't know. She brought a case to get a divorce. That it what I heard.

Q. Do you know what court it was in? Was it in the court of Jackson county?

A. I cannot tell *me*.

Q. You think it was here in this county?

A. She did not tell me anything about that. I did not hear that.

Q. Do you know whether she got a divorce after he went away?

539 A. I do not know anything about that.

Q. Some time after he went away?

Objected to by the defendant- as leading.

A. I never mixed myself in the concern, but I believe it was after that.

Q. Mrs. Snyder brought suit here and you heard something about it?

A. I expect; I don't know how that was exactly. I just heard a few rumors. I did not hear it from him and I don't like to say anything about that. We were in good standing together and I did not mix myself in. I expect you will find that matter at the court.

Q. I only wanted you to tell me in what county it was.

A. I cannot tell you. Divorce cases, I expect, are brought in these courts here.

Q. Was it in this county?

A. I expect it must have been in this county.

Q. Did Mrs. Snyder live anywhere else?

A. No; she was always here.

Q. You recollect of Mr. Snyder getting a surveyor to survey the land?

A. Well, I never saw him.

Q. Did he tell you that he had surveyed it?

A. No, sir.

Q. He told — that the four (4) acres were given in exchange for the six?

A. I only remember that he paid two (2) of the six (6).

Q. Well, he got four (4) acres in exchange for the six (6) by giving two (2) acres for riprapping?
A. Yes, sir.

Cross-examination:

Q. Mr. Seegar, you were sworn in this ejectment case that Mr. Mason spoke of?
A. Yes, sir.
Q. Your deposition was taken in this case that Mr. Mason spoke of?
A. Yes, sir.
Q. You say in answer to Mr. Mason's question that Mr. Snyder gave two acres for riprapping?
A. Yes, sir.
Q. How do you know that?
A. He told me so.
Q. You know simply what he told you?
A. Yes, sir.
Q. When did you find this title bond that you spoke of?
A. That was in 1861, I expect.
Q. Where is that bond now?
A. I gave it to him and I don't know where it is. He took it away.
Q. Mr. Snyder took it away?
A. Yes, sir; it did not amount to anything at that time; it had run out.
Q. Do you know whether the bond was recorded with the register of deeds of Wyandotte county's office?
A. As much as I remember. I think I was over and seen it there.
Q. You seen it recorded in Wyandotte?
A. Yes, sir.
Q. Is it not a bond made by James to Snyder for the same undivided interest?
A. No, sir; not from James to Gladden. Gladden and Snyder first made a trade, and Snyder gave Gladden eighty (80) acres near Garden City for his interest in the bottom land, and after that trade Snyder and James made a trade and James gave Snyder a title bond on the ten (10) acres of the Armstrong land.
Q. That bond was made payable to you, was it?
A. Yes, sir.
540 Q. The title bond was taken in your name?
A. Yes, sir; as much as I remember; I cannot tell any more exactly; I believe that James took a quitclaim from me; it must be recorded over there.
Q. How did you find out, Mr. Seegar, about the trade for the property in the bottom for the eighty (80) acres out at Garden City?
A. They made the papers out in my store.
Q. Who told you about that trade?
A. I saw that myself; I was down there; down there when the whole party were together.

Q. Was that after you found the title bond?

A. No, sir; the title bond was found afterwards; I believe that was the same title bond they made out.

Q. They were making out papers in your store and after that you found the title bond?

A. I only know that they made out a title bond in my store; I did not know it was in my name; I found it out afterwards.

Q. You mean that you found out about the transfer of the land in the bottom between Snyder and Gladden for the eighty (80) acres after you found the title bond?

A. Yes, sir; the papers were all together; Sloan was county clerk at that time; that Sloan is a brother to the doctor; I believe he is down in St. Louis.

Q. Who had that title bond recorded? Do you know, Mr. Seegar?

A. Well, I believe Snyder done it.

Q. You found it in your safe?

A. Yes, sir.

Q. Who had that bond made to you? In whose handwriting was it?

A. In James' handwriting.

Q. Did you get him to write it?

A. No, sir; I did not know anything about it—that it was in my name when they made it out.

Q. Did Snyder tell you that he had the bond made out to you?

A. No, sir; I asked him about that when I found it, and he told me that he could not keep it in his name.

Q. He wanted you to hold it in his name and for his benefit?

A. Yes, sir; when I found it it was run out; it run out in three years.

Q. Well, you held it according to his wish?

A. Yes, sir; it was in my safe.

Q. You did with it just exactly what he wanted you to do?

A. Yes, sir.

Q. Now, at the time the deed was made by James to Snyder to the six (6) acres you released that bond, did you not?

A. No, sir; I had nothing to do with the six (6) acres; I don't know anything more about it; I did not give James a release from the title bond; I gave him a quitclaim deed.

Q. You gave a quitclaim deed to James?

A. I gave a quitclaim deed for the title bond afterwards; about the same time the deed was made to this four acres, as I understand it.

Q. You signed that deed?

A. Yes, sir; I signed the quitclaim deed.

Q. Who did you give that deed to?

A. Well, that quitclaim deed, James wrote it, as much as I remember; I signed it for him and then he took it along; it must be recorded over there; I am not quite sure; I think I saw it once.

Q. Mr. James brought the deed to you and you signed it and he took it away?

A. Yes, sir; but if it is recorded—I cannot remember any more.

541 Q. Do you know who was present when you signed that deed?

A. No, sir; that is too long ago.

Q. Was Mrs. Snyder present?

A. I cannot tell you any more. That *you* must have been twenty-four (24) years ago.

Q. Do you know what was done with the bond at the time you signed the quitclaim deed?

A. No, sir; that is all I know about it.

Q. And Snyder was present when you signed the deed?

A. The quitclaim deed?

Q. Yes, sir.

A. That is a thing I cannot tell any more—that is, I cannot tell for sure; I cannot remember; it is too long ago.

Q. What did you make that quitclaim deed for?

A. I don't know. It appeared that he wanted it from me so that it would show that the bond had been complied with and so I could not claim anything from the land.

Redirect examination:

Q. Did Mr. Snyder tell you that he had six (6) acres of land down there in the bottom?

Defendant- objects to what Snyder told witness, because it is hearsay.

A. Yes, sir.

Q. Did he tell you how he had located it?

Objected to by the defendants for same reason as before.

A. No, sir.

Q. Did he tell you anything about it bordering on the river?

A. No, sir.

Q. He claimed to have six (6) acres of land?

A. That is what he told me.

Q. He did not say that he had any water there?

A. No. That is all I know. He told me that he had six (6) acres of land.

Q. He did not tell you what it was worth?

A. No, sir; but it was not worth much at that time.

Q. At the time he located it it was not worth much?

A. No, sir.

Q. Do you know how many years that was ago?

A. No, sir.

Q. Well, the price of land after this riprapping was done, it improved the land in value, did it not?

A. Of course I expect it improved it some in value; but according to what my land brought it did not much.

Q. Do you recollect when Fowler built their fine packing-house?

A. No, sir.

Q. You know there is one there?
A. Yes, sir; but I did not pay any attention to when it was built.
Q. Do you know where Fowler's packing-house is?
A. Yes, sir.
Q. Which way was this four acres of land that Snyder had from that packing-house?
A. I told you I could not tell about the four (4) acres. I only can tell about the two acres. That was southwest.
Q. The two acres was a part of the four?
A. Well, I expect so.
Q. Which way from the iron bridge was it?
A. South.
Q. A little east of south?
A. Well, of course; the line did not run regular. You can see it on the plat.
542 Q. Did you ever look at it on the plat of Kansas City, Kansas, in the register of deeds' office over there?
A. Traber had a map at O'Flarety's. I looked at that.
Q. You never saw the plat in the register of deeds' office?
A. No.
Q. Do you know whose land was on the north of this four acres?
A. Swope had some.
Q. Well, who had land on the west of this tract that Traber was talking about towards the Kansas river?
A. I don't know.
—. Do you recollect of Bigger having a tract there?
A. It may be. I don't know about that.
Q. Mr. Seegar, will you please put your name on this map and file it as a part of your evidence?

Objected to by the defendant- because the map is not shown to be a correct map.

Question by Mr. FERREY, of defendants' counsel:

Q. Do you know whether that is a correct map or not?
A. I cannot tell you that.

Question- by plaintiffs' counsel:

Q. Supposing, now, that, Mr. Seegar, this tract here on this plat marked Exhibit 8—supposing this—here is the red line representing the bridge and here is James street running down southeasterly until it comes to a point right north of the Joy tract, then it takes a little more southerly shoot and round southeasterly?
A. Yes, sir.
Q. Now, here on the side next to the Kansas river is a mark representing Armstrong street eighty (80) feet wide. Do you see that street running along there?
A. It seems to me we went up 30 feet from there.
Q. Here is Wood street; this street marked Wood street, butting up against this tract?

A. We commenced a survey, I expect, on the east side near about thirty (30) or forty (40) feet from Wood street extended.

Q. You run up there to that point?

A. I remember we commenced to survey thirty (30) or forty (40) feet from the east side of Wood street. I cannot tell exactly the distance.

Q. And you went westerly how far?

A. Then we took west two hundred and ninety (290) feet.

Q. Do you recognize this four (4) acre tract fronting on James street and marked three hundred (300) feet and five hundred and eighty (580) feet wide? Just reckon up what was the width of that tract there. There was another forty (40) feet that Traber got.

A. No; Traber had eighty (80) feet. I had forty (40) feet; Welland, forty (40); Trevern, forty (40); Deitch, eighty (80). Well, we had more than that together.

Q. Welland had forty (40); Seegar, forty (40); Travern, forty (40) feet; Deitch, forty (40); you had forty (40) feet, and how much did the lawyers have?

And. The lawyer tells me he gets half of it.

Q. What lawyer was that?

A. Traber.

Q. That was for collecting the claim?

A. Yes, sir.

Q. For your share you got forty (40) feet?

A. Yes, sir; for my share I got forty (40) feet. My share came last. The others sued—I didn't sue—then came to me and I said I had a claim against Snyder and I had better put it in, and I said I did not want to, and then they told me the others would get it if I did not.

543 Q. The lawyers paid the costs?

A. Yes, sir; but I don't know if they paid it.

Q. You did not pay it?

A. I did not pay it.

Q. Will you please now mark with a star, as near as you can, on this plat marked Exhibit 8 or will you write your name across the four-acre tract?

A. I can't on the four (4) acres.

Q. Well, write on the two acres that you know that Traber located; just write your name on that.

A. If this is a correct copy of the map that O'Flaherty had I can.

Q. Write your name across the land you have been talking about—that four acres or the two acres.

A. The two acres is all I know anything about. I don't know exactly. I said we ran thirty (30) or forty (40) feet from this east line. I believe it is thirty (30) feet; it must have come over here.

Witness is speaking of a line on the map before him and writes his name on the map.

Q. Mr. Seegar, you have written your name on the land you have been talking about, have you?

A. Yes, sir; on that two acres. The four (4) acres I cannot tell you anything about because I expect there was some trouble about that.

Q. Are you willing that this plat should be filed as a part of your testimony or in connection with what you have said?

A. If this is a correct map of what O'Flaherty had when he surveyed it. Well, I laid this sheet over the O'Flaherty map and run my pencil over the lines, if I did that, and that is a correct plat.

Q. Are you willing to take this as a correct map?

A. That is all I know, what I stated.

Q. Well, say yes or no.

A. Yes.

Q. The Swope land is on the northerly of it?

A. Yes, sir; I suppose that was clear to the bridge.

Q. What run along on the easterly of the four (4) acres I have represented there—what street ran along here?

A. That represented there.

Q. What street is that left here?

A. I had not anything to do with that.

Q. Do you know what street it is?

A. I believe the next street to James street is Wood street, and the next is Armstrong. I had nothing to do with Armstrong street.

Q. That tract run easterly to Wood street and westerly to Armstrong street?

A. Yes, sir.

Q. And right southerly of the Swope tract?

A. Yes, sir.

Further cross-examination:

Q. How do you know that the two-acre tract was a part of the four-acre tract?

A. Well, Mr. Traber got a deed from the United States assessor. Snyder was then in bankruptcy. He did not give in that part in the bankruptcy and Traber found it out that he had some other claims. I do not know just how that was, but on that account he got a deed from the U. S. assessor.

Q. For 2 acres?

A. I believe it was for 4 acres, but I don't know where the other 2 acres are. I can only suppose it was a part.

Further redirect examination:

Q. Traber told you that the two acres was a part of the four?

A. Yes, sir; of the four acres. He only told me that there was a dispute about or a mistake as to something wrong with the
544 survey. I can only tell about the two (2) acres because I helped to survey that.

Further cross-examination:

Q. All you know about its being a part of the six (6) acres was because you supposed it was?

A. Yes, sir. I supposed it was a part of the six (6) acres because he had to give two (2) acres for riprapping.

Q. You only knew that he had six (6) acres and you supposed that two (2) acres was part of it?

Further direct examination:

Q. You gathered this from what different parties told you?

Objected to by the defendant- as hearsay.

Q. You gathered this from what Mrs. Snyder and Mr. Traber told you?

A. Yes, sir. I heard it from different parties. I can't tell you who all.

Further cross-examination:

Question. Do you mean to say that Traber told you that the two acres was a part of the six (6) acres?

A. Yes, sir.

Q. Well, did he ever tell you that the two (2) acres was a part of the four (4)?

A. Yes, sir.

Q. When?

A. That was when he laid it off. He sold the whole four (4) acres to Cobb and Bartlett, and then he found out that it was not laid off right; that was the part that he claimed to have. I never paid so much attention to it, because I never had anything to do with it, except this forty (40) feet front.

HENRY R. SEEGAR.

Signed in my presence this 13th day of December, 1884.

S. W. BLODGETT, *Examiner.*

Endorsed: 4668. Opened by order of court May 25th, 1885. Filed May 13, 1885. A. S. Thomas, clerk.

(Here follows map marked p. 545.)

546 Here in original case made is Exhibit 8, map of Kansas City, Kansas.

Seegar deposition map above.

547 Mr. MASON: We next offer the depcsition of C. F. Peters, taken the 20th day of January, 1885.

Objected to by plaintiffs because incompetent, irrelevant, and immaterial, and because witness should be produced, being subject to the process of the court.

Which objection was by the court sustained; to which ruling of the court the defendants at the time duly excepted.

Said deposition is in words and figures as follows, to wit:

In the Circuit Court of the United States — and for the State of Kansas.

NICHOLAS MCALPINE *et al.*, Plaintiffs,
vs.
G. W. TOURTELOTT *et al.*, Defendants. } No. 4668.

Be it remembered that on the 2nd day of January, 1885, I ordered a continuation of the examination of witnesses in the foregoing cause and set the time for the further completion of such examination for the 5th day of January, 1885, at the office of James M. Mason, in the city of Wyandotte, Kansas, at 10 o'clock a. m., and ordered that notice be given the defendants and their attorneys of record in accordance with said order.

A copy of said notice so served upon defendants and the endorsements thereon is filed herewith and made a part of this certificate. On the said 5th day of January, 1885, appeared the said parties by their attorneys, James M. Mason, for plaintiff, and Mr. Ferrey, of the firm of Pratt, Brumback and Ferrey, of counsel for the defendant-.

Thereupon the plaintiff- produced as a witness in their favor C. F. Peters, who, being by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth in the foregoing-entitled cause, *and* examined in question and answer in the form of direct and cross examination, said examination being reduced to writing by me in the presence of the witness and said counsel, and I also certify that on the 6th day of January, 1885, I made an order that, at the office of James M. Mason, *in the office of James M. Mason*, in the city of Wyandotte, State of Kansas, at 2 o'clock, on Thursday, the 8th day of January, 1885, I would present to and read the testimony of C. F. Peters and request him to sign the same, and a copy of said last-mentioned order is hereto attached and made a part of this certificate and with the endorsement of the service thereof.

I also certify that on the 8th day of January, 1885, at said time and place, appeared said witness and also James M. Mason, attorney for plaintiffs, and also Lafayette Traber, one of the defendants, and I did read said testimony to said witness in the presence and hearing of the parties aforesaid and request him to sign the same; that said C. F. Peters did in my presence and the presence of Traber and said Mason and Nicholas McAlpine sign his said testimony; that said testimony is attached hereto.

Witness my hand, at the city of Wyandotte, Kansas, this 8th day of January, 1885.

SAMUEL W. BLODGETT, *Examiner.*

Fees, $18.00.
Said C. F. Peters' witness fee paid by N. McAlpine, $3.00.

548 In the Circuit Court of the United States for the District of Kansas.

NICHOLAS MCALPINE, JAMES M. MASON, and SOPHIA A. COBB, Plaintiffs,
vs.
GEO. W. TOURTELOTT, GEO. P. ALLCUTT, LAFAYETTE TRABER, C. F. Welland, Teresa Snyder, James D. Snyder, Fred. Snyder, Caspar Snyder, Eugene Snyder, Defendants.

Notice to Take Depositions.

To above-named defendants and their attorneys and guardians *ad litem:*

You are hereby notified that the testimony of C. F. Peters and other witnesses to be used as evidence on the trial of above-entitled action on behalf of the complainants will be taken at the office of James M. Mason, corner of 5th street and Minnesota avenue, before Samuel W. Blodgett, examiner, in the city of Wyandotte, county of Wyandotte and State of Kansas, on Monday, the 5th day of January, 1885, between the hours of ten (10) o'clock a. m. and six (6) o'clock p. m., and that the taking of the same will be adjourned from day to day between the same hours until said testimony is completed.

JAMES M. MASON,
Attorney for Plaintiffs.

STATE OF KANSAS, *County of Wyandotte,* } *ss:*

N. McAlpine, being duly sworn, deposes and says that on the 2nd day of January, 1885, he served personally by delivering a copy thereof on each of the firm of Pratt, Brumback and Ferrey, Lafayette Traber and Goodin and Kepplinger, attorneys representing all defendants in this case, a copy of the within notice by delivering a copy of the same to each respectively.

N. MCALPINE.

Subscribed and sworn to before me this 3rd day of January, 1885. Commission expires April 5, 1887.

JNO. COX, [SEAL.]
Notary Public.

In the Circuit Court of the United States — and for the District of the State of Kansas.

NICHOLAS MCALPINE *et al.*, Plaintiffs,
vs.
G. W. TOURTELOTT *et al.*, Defendants. } No. 4668.

Notice.

All parties will take notice that on Tuesday, the 9th day, at 2 o'clock p. m., of January, 1885, I will, at the office of James M. Mason,

in the city of Wyandotte, Kansas, present to and read the testimony of C. F. Peters, and request him to sign the same.

Witness my hand, at the city of Wyandotte, Kansas, this 7th day of January, 1885.

S. W. BLODGETT, *Examiner.*

STATE OF KANSAS, } ss:
County of Wyandotte, }

Nicholas McAlpine, of lawful age, being duly sworn, deposes and says that on this 7th day of January, in the forenoon of that day, he personally served personally upon the firm of Pratt, Brumback and Ferrey, Lafayette Traber and Goodin and Kepplinger, attorneys representing the defendants in this suit, a copy of this order by delivering to each of them a copy hereof.

N. McALPINE.

Subscribed and sworn to before me this 8th day of January, 1885. My com. ex. Apr. 5th, 1887.

JNO. S. COX, [SEAL.]
Notary Public.

549 In the Circuit Court of the United States in and for the District of Kansas.

NICHOLAS McALPINE *et al.*
vs.
G. W. TOURTELOTT *et al.*, Defendants.

Testimony on the Part of the Plaintiffs.

C. F. PETERS, being called as a witness on the part of the plaintiffs and being first duly sworn, testified as follows:

C. F. Peters.

Q. Where do you reside?

A. I live over in Kansas City, Kansas, at the corner of 5th and James street.

Q. What is your age?

A. I will be fifty-four (54) years old on the 16th day of February next.

Q. What is your occupation?

A. My occupation is mining generally, in the last nine or ten (10) years. At present I am at work at Plankington and Armours.

Q. How long, Mr. Peters, have you lived in the bottom in that vicinity?

A. Well, since the fall of 1857. I came here in the fall of 1857 to Wyandotte.

Q. State if you know the plaintiff Mr. McAlpine.

A. Yes, sir; I have known him for a number of years.

Q. Do you know the defendant Mr. Tourtelott?

A. Yes, sir.

Q. State if you ever knew Joseph E. Snyder.

A. Yes, sir; I knew him for ten (10) years before he died.

Q. State if you ever knew of his having any landed interest in what is known as Kansas City, Kansas.

A. Yes, sir; he often told me that; that he had an interest in lands there; that he never had it settled in fact; that he was to have it at one place, and that he got it at another place a long time after that. Why, he told me that they pushed him away out on the other edge of the bottom, in what he called the tail end of Kansas City, Kansas, down near the Kaw river. There is where he finally got his interest that he was to have from James. I think it was from James that he was to get it. If I am not mistaken he came over to my house at one time when I kept a boarding-house there called the Morning Star, there by the bridge; I think it was in 1870. He wanted to know if I knew the lines and the survey of the streets down through the bottom. I told him I did not know the lines of the streets as they were surveyed, as they were not opened up. I was then, I believe, working on James street. It was opened up from the bridge toward the State line, so I told him where James street was. I could not tell him where Wood street was. I told him I would go with him and probably we could get some one to point out the stakes. So we walked around through there and I showed him James street, and we walked back towards the Kaw river, but we could not see any stakes. Wood street was then full of brush and weeds and everything, and we could not see much well. He says, "I have some land lying right in here somewhere." I says, "Well, you know best." He says, "Well, I have a piece of land up in here somewhere." Bigger owned a tract above there, and somebody owned a piece back a little. Orbison and — owned a tract up in there and sold to Woods, I think. I know that
550 I leased ground there of him.

Q. When was this?

A. I think it was in 1870; I think it was thirteen (13) or fourteen (14) years ago this last fall since we were over in the bottom.

Q. Well, when did you first know Joseph E. Snyder?

A. I knew him when I kept hotel in Wyandotte.

Q. How many years ago is that?

A. That has been—well, before the war and during the war.

Q. What was your business then?

A. I was keeping a hotel here.

Q. Where did you keep hotel?

A. First I kept one on Nebraska avenue and then I bought a house over on Washington avenue—the old Wyandotte house.

Q. What year was this that you bought the house on Washington avenue?

A. I think the second or third year of the war. I don't remember just what year it was when I went onto Washington avenue.

Q. When did this man, Joseph E. Snyder, first begin to talk with you about having any interests in the lands in the bottom?

A. Well, that was some time along during the war; that was after I had commenced keeping hotel.

Q. What did he say during the war?

Defendants object to all conversation between the witness and Mr. Snyder and all other persons not parties to this suit on the ground that the same is immaterial, incompetent, irrelevant, and hearsay.

A. Oh, he said he had an interest in the lands in the bottom.

Q. How did he happen to speak about it?

A. Well, Mr. James was boarding with me at that time and had been for a long while.

Q. Mr. James boarded with you?

A. Yes, sir; Mr. James boarded with me off and on for quite a while.

Q. How did Snyder happen to be here?

A. Well, he often came there to see James. I was very well acquainted with Seegar, and Seegar at one time introduced him to me as his brother-in-law. He had a jewelry shop right back of his store on Main street, and I often met him in there.

Q. In Kansas City, Missouri?

A. Yes, sir.

Q. You often met him in there?

A. Yes, sir.

Q. Did he ever come to you at your hotel?

A. He did not come often in Wyandotte; I was over in the shop.

Q. The first conversation that you had with him about any interest in the lands in the bottom was in Kansas City, Missouri?

A. Yes, sir; he talked about it with me. He told me that he had an interest in lands in the bottom; that he had bought an interest from James.

Q. What time was that?

A. That was some time during the war.

Q. What did he say then?

A. He wanted to know what it was worth.

Q. How large did he say his claim was?

A. He did not say anything about how large it was.

Q. How many acres did he mention?

A. He mentioned seven (7) or eight (8) acres that he had bought from James; that he had paid James in money or jewelry or something of that kind.

Q. Now, after you kept hotel in Wyandotte, on Washington avenue, where next did you keep hotel?

551 A. Over on the corner near the old bridge, called the Morning Star.

Q. Over near what bridge?

A. Over near the old bridge between Wyandotte and Kansas City, Kansas.

Q. How far from where the new iron bridge is now?

A. It was but a very little piece from the Missouri river, near the corner where Fowler has a fence now. That is where my house was before I sold it.

Q. That fence that runs north and south?

A. Yes; rather, my house was on the third lot from the line.

Q. The third house which way from the line?

A. From the south line—from the east line, I should say.

Q. Where was this hotel that you speak of over there; was it easterly or westwardly of James street?

A. No; it was east and rather on the north side towards the Missouri river; it was right fronting the Missouri river.

Q. What was it that you called that hotel?

A. It was called the Morning Star.

Q. Who was the proprietor of it?

A. Myself; I kept the hotel there.

Q. About when did you go there to keep that Morning Star?

A. Well, I think it was fourteen (14) years ago this last fall.

Q. How long did you keep hotel there?

A. I kept there about a year, and I went there one fall and sold out in the next fall or early in the next winter.

Q. Did you know a man by the name of Swope?

A. Yes, sir; Swope had a tract of land up in there.

Q. Is it southwardly of the Orbson tract?

A. Yes, sir; south. The Woods tract was back of a Bigger tract.

Q. When you say back of Bigger's you mean northwardly towards the bridge?

A. Yes, sir; towards the bridge towards the Kaw river. I think that the Swope tract is where Fowler has his cooper shop somewhere near; the Orbison runs through there in a point.

Q. Well, now, where did you have this second conversation? You say that you had another conversation with Snyder in 1870—this last time.

A. Well, he said that he had an interest in land in the bottom there that had never been settled; that is where he was to have it; that he was to have it in there somewhere; he said they change him or pushed him around until they say that I have got my land up here. He says, I don't know where it lays; I don't know where the lines are; so he wanted me to show him where the lines are.

Q. Which side of James street did he think it lay on?

A. He said that it laid between James street and the Kaw river.

Q. Did you know how many acres he said?

A. No, sir; he did not say exactly how many—not as I remember.

Q. Did he say as many as four acres?

A. Yes, sir; as much as that and more, I believe. He claimed to have seven (7) or eight (8) acres at one time. I don't know whether he had four (4) acres at that time or not, but they shoved him or cut him off so that he got that tract there.

Q. How long did he say that he had been holding that tract that he finally got?

A. That time that he said that he had an interest in land in the bottom there, but it never was divided and he did not know exactly where it was he wanted to find it; he said it was up in there somewhere.

Q. This is what he was talking about in 1870. Was that which

was out and off from what he claimed the first time when he came to you?

552 A. Yes, sir; that is what he got for his interest that he was to have in the bottom. It was settled then that he was to have an interest there; first he was to get an interest clear to the Missouri river, but finally he did not get it, because he was run back over to James street, and he told me that he did not like it much.

Q. He told you that he was to get a tract of land clear to the Missouri river and that he did not get —. For what reason did he say?

A. He said that James had made an arrangement with the railroad company to riprapp the land along the Missouri river and to take their pay in lands, and that he could not let him have it there.

Q. He would not let him have it next to the Missouri river?

A. No, sir; so that he had to take that which laid back there, and he did not seem to be much satisfied *much* with it. He did not think it was worth much, if anything; about two hundred ($200) dollars then. I believe he would have sold it for five hundred dollars ($500) then.

Q. You don't know what he would have sold it for?

A. No, sir; I don't know; but I think he would have taken a little money for it.

Q. Did you find out from him how many acres he had to give the railroad company for riprapping the river banks?

A. He did not say how much. He did say that he had to give some with other parties there; that it took some lands to get the river bank riprapped, so that he got a less amount of land. I told him that that would secure the land along the river from being washed away, and he said, yes; he knew it.

Q. What did he finally get according to his statement? What did he finally get for his claim that he had during the war at the time he was talking with you during the war—what did he finally get?

A. All I know about that is that he got a piece of land up there.

Q. How do you know that he did?

A. That is what he told me.

Mr. Ferrey, of the firm of Pratt, Brumback and Ferrey, of counsel for the defendant-, not being present during the greater part of the examination of the witness, and upon the testimony being read over, objects to all conversation between the witness and Snyder and between the witness and all other parties not being a witness to this suit, on the ground that the same is incompetent, irrelevant and immaterial, and hearsay.

Q. Did he tell you what he finally got?

A. That is what he got finally; that is all he got for what he had paid James. He said, I gave him more money than what it is worth. He says, I thought he had better take it, as it was paid for anyway. He says, I will have to take it now.

Q. When did he pay for it—away back some time before that?

A. Yes, sir; he paid for it some time before, and it never was

fixed up with James. I suppose he left James have some money from time to time.

Q. You don't know how he came to get it?

A. No, sir; I don't know how he came to get it; only I know he had it paid for before.

Q. Did he tell you how long before he had paid for it?

A. No, sir; I only know that he claimed the piece of land there for some time before.

Q. How many years did he claim to have this interest in this land?

A. Oh, he claimed an interest from James for a long number of years before—that is, ever since we were on James' land in there. I don't know just how long he had that interest in there. I
553 know that that land came from Armstrong and that Armstrong promised them eighty (80) acres out of that bottom—each forty (40) acres.

Q. Armstrong promised James and Wier each forty (40) acres of land there?

A. Yes, sir; he promised that to James and Weir and he promised to furnish all the expense of money to go to Washington and get the title in good shape.

Q. Did they finally get the title in good shape?

A. Yes, sir; they got a good title from Armstrong, and I suppose they got a good title from James and Wier.

Q. Then the title that Snyder got he got through James?

A. Yes, sir; Snyder told me that he got the title through James; still I never saw any deed from James to him any more than what I heard him talking when he came up there to look for this ground. He did not know then where these lines were.

Q. Where was this claim located that he was looking for in 1870?

A. It was west of Fowler's packing-house, westerly of James street—somewhere in there.

Q. Along southerly on the Swope tract?

A. I don't know; the land in there was about all sand hills and brush.

Q. Did Snyder tell you what he finally got for his claim that he had during the war?

A. He said they finally pushed around until they got him up to the other end, up to the Kaw river; that he did not like the lay of the land, but he said, I suppose I will have to put up with it; that it was better to get that than nothing; I do not know what titles he had.

Q. Did Snyder say that he owned that claim there for a great while?

A. Yes, sir; he said it was for the land that he owned for some time back.

Q. In the early conversation that you speak about it was undivided?

A. Yes, sir; it was then undivided.

Q. And this conversation was after the division?

A. Yes, sir; that was this part of it.

Q. The land you were talking about in 1870, this was the final division of the claim that he had during the war?

A. Yes, sir; that was what he got from James, but whether it was after they had divided up or not I can't tell.

Q. Did you ever hear James say anything about this land?

A. Not much.

Q. Did you ever hear him say anything about it?

A. About the Snyder tract?

Q. Yes, sir.

A. I never head him say anything about it; I never heard him talk much about this interest over there.

Q. Did he mention anything about what Snyder had said? Did he mention anything about these facts?

A. No, sir; he never said anything to me about Snyder.

Q. Did he tell you that he gave him this land west of James street?

A. No, sir; I never heard him say much about it; he boarded with me quite awhile. I bought a couple of lots from Mr. Woods.

Q. How long did Mr. James board with you?

A. I can't tell you.

Q. From what year to what year; can you state?

A. No, sir; 1869 was the last year he was over there.

Q. When did he board with you over at the Morning Star?

A. No, sir; his family were over there then, and when his family came he leased the house and moved over there, and after — he built a house and lived in it.

554 Q. At the time of this second conversation that you say that you had with Snyder in 1870 was he stopping there at your hotel as a guest?

A. Who—Snyder?

Q. Yes, sir.

A. No, sir; I don't know what purpose, but he came in there occasionally.

Q. Did you know him well?

A. Yes, sir.

Q. What was his business?

A. He kept a jewelry store there in Kansas City—him and Seegar. I think he was in the business; at least they were in the same place together.

Q. Did you ever know of his being in bankruptcy?

A. I heard of it. I heard Seegar talking about it when him and Seegar was in partnership.

Q. What was his financial condition? Did he have any money to spend after going into bankruptcy business?

A. Not that I know of.

Q. Did you ever see him have any money?

A. No, sir.

Q. Did he make any purchases of land after that?

A. No, sir.

Q. Were you intimately acquainted with Snyder's business?

A. No, sir; not very particularly.

Q. This Snyder that you have been talking about is the same Joseph E. Snyder that went into bankruptcy?

A. I heard Mr. Seegar say that he was the man that went into bankruptcy. Snyder was then in business with Mr. Seegar; at least they were together in one house.

Q. Then, when?

A. I can't tell you exactly when; I don't remember what year it was exactly; I can't tell you exactly what year it was.

Q. Did Mr. Snyder at that time, in 1870, when this second conversation was had—did Mr. Snyder claim any lands near the Morning Star, easterly of James street and between James street and the Missouri river?

Objected to by defendant- as incompetent, irrelevant, and immaterial and hearsay.

A. Why, yes; he said that he had some land up in there, but that he did not exactly know where it was.

Q. You don't mean that he claimed land east of James street?

A. No, sir; it was westwardly of James street; it was on the west side of James street. That was what he said it was, on the west side of James street.

Q. Snyder, then, was not looking for any land claim on the Missouri side of James street at that time?

A. No, sir; he was not looking for land there. He was looking for this land on the west side of James street, and he did not know where it was, and he wanted to know if I could show him where to find it or where it was. I told him that I could not tell him anything about the lines, but I could show him where James street was surveyed through; that I could not tell him anything more than that. Then he says, "Well, I think my land lies over in here some place, somewhere towards the Kaw river." So we walked around through there, and he asked me if I thought it was worth anything. I told him that I thought it would be worth something after awhile. It then looked pretty rough. I told him that I thought it would be worth something after awhile, after they riprapped the land along there and the packing-house was built. Snyder never said anything more about — his title was, however; anything else about it I don't know.

555 Q. Did Mr. Snyder tell you that this claim which he was there trying to locate in 1870 was what he got for his claim that he held during the second and third years of the war?

Objected to by the defendants as incompetent, irrelevant, and immaterial and hearsay.

A. Well, that is what he said—that he was to have his land in there, near the Missouri river. That was what he was to have got. He said it was never divided, and finally they pushed him clear around up in this corner. He says, I don't know exactly where my land lays, except that he said it is up in here somewhere, is what he told me.

Q. That is, up towards the Kaw river, you mean?

A. Yes, sir; somewhere in there.

Q. When you speak of the war, second or third years of the war, you mean the war that is known as the great rebellion? Is that what you mean—the war between the North and the South, or the war for the Union, as some call it?

A. Yes, sir; that is the war I mean.

Q. Tell me, if you know, was the tract that Snyder was looking for in 1870 bounded by the Bigger tract on the Kansas-river side?

A. I do not know whether it was or not, because I never knew where the Bigger land was. I can't tell.

Q. Well, did it reach the Bigger land or touch it?

A. I can't tell you. I don't know how much land Bigger had up there. I know that Bigger bought some land up there afterwards.

Q. There was something said about the Bigger land when you were up there?

A. Yes, sir; Bigger had some land up there.

Q. On the Missouri river?

A. Yes, sir; he had some land up there on the Missouri river.

Q. Did he not have some claim over on the Kansas river?

A. He did buy some lands up there afterwards. I think he bought it from Toney, who was administrator for James.

Q. Do you know whether this tract that Snyder tried to locate in 1870 touched this land or tract of land that Bigger got?

A. No, sir; I don't. I can't tell you about that.

Q. Did Snyder tell you about trying to have this land located on the Missouri river and they did not agree with him about it?

Objected to by defendants as incompetent, irrelevant, and immaterial and hearsay.

A. Well, he said that he was to have his land run clear to the Missouri river, and he said that they had to give some land away along the Missouri river for riprapping to keep the river bank secure, and that parties who owned land along the banks of the Missouri river had made contract with the railroad company to ripprapp the banks of the Missouri river to keep it where it was for a certain amount of land from the mouth of the Kaw river way down to the State line, and that James could not convey him any land along the river, so Snyder could not get any land along the river. Snyder said that he was to have land in there, and on that account that he could not get it there.

Q. He said that this first location was on the Missouri river, and he was compelled on that account to take land west of James street?

A. That is what he said.

Q. So that he got his claim finally located in there?

A. Yes, sir; somewhere in there. It was upon the Missouri river. That tract of land must lie in there somewhere next to the Kaw river. I don't know anything about it, only that it was west
556 of James street, and that ground there belongs to Bigger, and that on the river at that point belongs to Orbison.

The witness in the foregoing answer is referring to a map spread before him.

Q. Did he claim next to James street when he came to go over with it way back during the war?

A. I don't know whether he owned it or not, but he claimed that he had an interest in lands that he bought from James, or that he made some trade with James and paid him for it. I knew all the time that he claimed that he had an interest in the bottom. I used to often hear him talk about it, that he had an interest in the bottom.

Q. He thought that the land that he had got was on the Missouri river?

A. Well, the fact is he did not know where it was; he said that it was never divided up and I never saw any deed for it.

Q. He said when it was divided up that he got this land on the Kaw river?

A. Well, the fact is he did not know where it was; he said it was never divided up and I never saw any deed for it. When he was talking he said that the land was located up that way; he said that what he got finally was to have up there; whether he got it or not I don't know; I don't know whether he ever got it up there or not; I did not see him over there afterwards, but I see him in Kansas City; he went away after that.

Q. He had held this claim since the second or third year of the war?

A. Yes, sir; he claimed to have an interest in there, in the bottom, for some land; he claimed to have an interest he bought from James, I mean.

Q. This was the final location—that is, what he got west of James street?

—. That is what he said; that he was to have it.

Q. Are you acquainted with this map; have you seen this map before?

A. Yes, sir; I have seen the map a hundred times before, I guess.

Q. Have you seen the map in the register of deeds' office?

A. Yes, sir.

Q. Do you know this tract of land that is along there?

A. Long here? No, sir; I don't know it from this point here; this here is Orbison's and that is Bigger's; he owns it; and that is the Swope tract; it reaches from the Missouri to the Kansas river.

Q. What direction did it lie from the Bigger packing-house interest?

A. Well, the Bigger packing-house interest was on the tract; the Bigger packing-house lies right opposite to this ground; the Bigger packing-house is in there.

Q. Now, tell me in what direction from this red belt of land representing the Swope tract was the old packing-house; was it northwardly or southwardly of it?

A. This tract?

Q. Yes; was it towards the State line?

A. Yes, sir; the packing-house interest was towards the State line.

Q. From the Swope tract?

A. Yes, sir; from the Swope tract; the Swope tract runs on the north side of it.

Q. If this be true, then in what direction was this claim that Snyder was looking over in 1870; in what direction was it, sir?

A. Towards the Kansas river.

Q. In what direction from this red belt?

A. South from that towards the State line and up the Kaw river.

Q. Don't you know how wide it runs?

A. No, sir.

Q. Do you recollect of him saying anything about it being
557 three hundred (300) feet wide?

A. I don't know; I suppose it was, though I never heard him say anything about it, only that he had some lands there as he walked through there.

Q. You walked from James street down towards the Kansas river?

A. We walked all around there, down here, in through there, all through here; I can't teil exactly how far it did extend.

Witness in a foregoing answer referring to a map that is spread before him.

Q. Was there any stake set at that time?

A. No, sir; none at all; we could not find any at all; James street was entirely open and passable at that time.

Q. You are sure that the entire tract that he claimed lay west of James street?

A. That is what he said at that time.

Q. Was that what he got from what he had held during the war?

A. He said that was his share of the land that he was to get in the bottom, and they finally pushed him around in this corner, and he says, I have got an interest in there somewhere.

Q. Did he say that which he got there was from what he held during the war?

A. Yes, sir; that is what he said. He said, I finally got my land up in here, and I am not much satisfied with it; it is not worth much; it cost me more than it is worth.

Q. Then he made an exchange with James?

A. I don't know how he got it; he said that was his part of the land.

Q. You only know that he paid a consideration for it away back in the time of the war?

A. He said that he was to have a tract of land from James.

Q. Well, he had paid for away back during time of the war?

A. Yes, sir; I don't know how he paid for it, but he paid for it some time away back.

Q. You don't know but that he paid land for it?

A. I don't know what he paid for it. I don't know anything about that except what he told me.

Q. All that you know about it is that he paid for it way back before this last conversation?

A. Yes, sir; he said that he had paid for it, still I never saw any deed for it.

Q. You don't know how long after that it was before he had any deed from James?

A. No, sir; I don't know whether he ever had any deeds from him or not.

Q. You did not see any papers pass between them?

A. I don't know anything about that at all.

Cross-examination:

Q. Now, all that you know about this business, Mr. Peters, is from what Mr. Snyder told you?

A. Yes, sir; that is all.

Q. And that is all that you know about it?

A. Yes, sir; that is all that I know about any transactions between them; I only know from what I heard him say.

Q. All that you know about Snyder's claim to any lands up here—that is, what he was talking about?

A. That is all I know about it; it is by what he claimed. He didn't know himself then where it was, but that it should be somewhere in there.

Q. He said that his land was up near a point of the Kansas and the Missouri rivers, and said that he didn't know where it laid, did he not?

A. Yes, sir.

558 Q. And he came to you and asked you if you knew where it was and you said that you did not?

A. No, sir; I told him that I did not know anything about it. All that I could tell him was where James street was and probably where Wood street would run; but as to how the land lay I did not know anything about it.

Q. And he didn't know himself?

A. No, sir; he did not know himself.

Q. Well, where did he say that it was?

A. He said that he thought that it was somewhere in there, and we walked around in through there.

Q. Somewhere between James street and the Kaw river?

A. Yes, sir; from James street towards the Kaw river. He thought, maybe, that his land lay in there somewhere.

Q. How much land did he claim up in there?

A. He did not say how much exactly. I don't remember the number of acres exactly that he said he was to have, whether four (4), five (5), or six (6) acres or seven (7) acres. I don't think that he mentioned any number of acres. He only claimed to have some land in there, but he could not find out anything about the lines. I knew that Bigger had a tract of land in there, and Swope, and I know that Orbison owned some land up in that point.

Q. At the time that you had the conversation with him did James street run clear through?

A. Yes, sir; James street was passable for wagons.

Q. Was Wood street laid out then?

A. Yes, sir; I suppose that it was laid out.

Q. I mean was it opened up?

A. No, sir; it was not.

Q. Nor Armstrong street?

A. No, sir; nor Armstrong street. It was all commons. It was all timber up in there.

Q. Was James street opened up as a street?

A. They had used it then as a street. It was opened up, and then Wood street was opened up right along after that time. When I first commenced business there James street was not opened up yet, and then they finally opened it up. They opened up a road along the river and then used that. It was then all opened from my house, from the corner.

Q. Where was your house?

A. Right at the bridge, the old bridge.

Q. East or west of it?

A. Rather northeast of it.

Q. Do you know when this riprapping was done?

A. I don't remember exactly the year it was begun in; it has been some years ago. I think it was in 1870.

Q. Well, about what year? Can you designate any year?

A. No, sir; I can't; it was 1871 or 1872; I am sure that it was somewhere along there.

Q. Now, when did you have the talk with Mr. Snyder, when you went over this land?

A. That was before the riprapping was done.

Q. How long before?

A. I can't tell how long before, but I remember that it was several months before.

Q. When he came down and told you that he had a piece of land up in there nothing had been done upon the river then?

559 A. No, sir; nothing had been done then; if they had they had not done much, for after that they done more. I think they spent one thousand dollars ($1,000) along there.

Q. At the time he came to you and said that he had land up in there nothing had been done at all?

A. No, sir; not a thing.

Redirect examination:

Q. You don't know what year that was?

A. No, sir; I don't know exactly, but I think it was in 1872 that they commenced riprapping.

Q. You think that it was in 1872 that they commenced riprapping?

A. I know that they worked at it for two years. One year the riprapping caved in and they had to repair and fix it up again.

The last riprapping was done in 1878, I think. They finished clear along up the river.

Q. How was it when you went there in the Morning Star?

A. Well, there was no riprapping done that I remember of; there may have been some rocks hurled there; I don't think there was, though, because we used to get out water; there was some rock at the point, I think; some rock there. They did some riprapping, and after that they done some more. It has been so long ago that I have forgotten. There was then some riprapping done at that time.

Q. At the time that your Morning Star was there?

A. Yes, sir; the year that I moved out they finished up and commenced on it before that.

Q. That is your present recollection?

A. Yes, sir; that was after I seen Snyder there. Snyder had been there a long time before that.

Q. Well, it was commenced while you was there in the Morning Star?

A. Yes, sir; they may have commenced on it while I was there. I know that the contract was let; I know that much, and I know that I told him that the river would be secured; that is what I had heard and was all that I knew about it; I knew that they went to work right along after that.

Q. Of course, you were talking about the contract for riprapping the river?

A. Yes, sir; I think the contract was let at that time. There was not much, if anything, done at that time.

Q. You state in your evidence that you mentioned about riprapping in that conversation. How much land did he say that he had to give?

A. He told me the parties said that they could not deed the land away along the river because they had to deed a certain amount of land to the railroad company to keep the river up.

Q. The contract was let at that time?

A. Yes, sir; the contract was let.

Q. You are not sure that they had commenced riprapping at that time?

A. No, sir; but they may have been some rock there.

Q. Don't you think there was some rock near that point?

A. Yes, sir; I think they had hauled some rock up there.

Q. The parties who had furnished it had put it there?

A. No, sir; I don't know anything about it. I think there has been some rock put in there, but who did it I can't tell, but there was some rock put there; I can't tell who did it.

Q. Do you know when the contract was let?

A. That is what I heard.

Q. Snyder was talking about the amount of land that he had there?

A. Yes, sir; and we were talking about the river having to be riprapped clear down there from the State line.

Q. He told you that he thought that his claim was to be
560 located on the Missouri river?

A. Yes, sir; and he told me that he could not get it located on the Missouri river because they could not give him lands there.

Q. You are sure that the riprapping was not completed then?

A. It was begun, I think, but I am not sure.

Q. It was not completed?

A. I can't exactly tell; I am not sure; I don't hardly think it was; it may have been begun. I don't think there was anything done; if there was it was not much.

Q. You don't know whether it was begun or not?

A. I know this much about it, that they were to do it.

Q. You have a recollection of some stone being hauled there?

A. Yes, sir; I think some stones were hauled up there to secure that point.

Q. At what point do you mean?

A. The point between the Missouri and the Kaw river.

Q. You don't know along that bank how far the stone had been placed at that time?

A. No, sir.

Q. If there was stone placed along that point there the work had been begun by somebody?

A. Yes, sir; but whether by the railroad company or some other person I don't know.

Q. You never heard of anybody riprapping the river bank except the Hannibal and St. Joseph Railroad Company? You don't know of any other party doing any riprapping?

A. That is all I ever heard of.

Q. There was some rock hauled up there at this point?

A. Yes, sir; but Orbison and —— may have done it to secure their land; I don't know who done it.

Q. There was some rock there?

A. Yes, sir; there was some rock there.

Q. It was over where the railroad company had a contract to riprap that point?

A. Yes, sir; there was some rock there; it was down on the other side of the Kaw river, near that point on the Missouri river, because I know that it caved in there and a part of the ground washed away; there was rock hauled there at that time.

Q. This conversation must have been had after the contract was let to riprap the river bank?

A. I don't know whether the contract was let or not; anyhow, I know that they were going to let the work, I knew, to the railroad company to riprap the river all along there; that was to keep the river where it was.

Q. That was the reason that Snyder said that he could not get this land there?

A. Yes, sir; he said that he had to give so much land there to keep the river where it was.

Q. Did he tell you how many acres he had there?

A. He only said that he had so many acres, and that he did not get as much land as he expected to.
Q. That was on account of the riprap?
A. I don't know whether it was on that account or not.

Further cross-examination:

Q. Now, you say you don't know whether the stones were placed there under the contract or not?
A. No, sir; I can't tell as to that; I know that after there was work done there by the contractors, because I worked under them myself.
561 Q. Now are you sure that the contract was let at the time you had this conversation with Snyder?
A. No, sir; I can't, because I do not know whether it was or not.

Further direct examination:

Q. After it had been riprapped there was some breaks in it along on the banks?

Objected to by the defendants because the same matter has been already gone into on the part of the plaintiffs, and it is not a cross-examination on a new matter brought out by the defendant-.

A. Yes, sir; a year after that I believe they went to work again. I know that the work was put up by the railroad company and then the contract was taken from the railroad company by another party. I know that the work was then done by that party. I don't know who got the contract or whether the contract was let then or not. I can't tell, because I don't know anything about it.
Q. Then after a couple of years of riprapping they finally got it completed?
A. Yes, sir.

Further cross-examination:

Q. Was that riprapping complete- and the break completed before or after Snyder was up there talking to you?
A. It was completed long afterwards.
Q. Long after Mr. Snyder was there?
A. Yes, sir.

Further direct examination:

Q. How long afterwards; can you tell?
A. No, sir; but I know that it was finished long after we had that talk together.

By the defendants:

Q. Do you know that the contract was let at the time that you and Snyder were talking?
A. No, sir; I don't know that.

Q. Did you and Snyder talk about why the riprapping was to be done?

A. Yes, sir; in order to keep the river where it was.

Q. Did Mr. Snyder tell you that the contract was let?

A. No, sir; I heard that before that.

Q. Did you hear anybody say that the contract was let, or do you know of the contract being let at that time?

A. No, sir; I did not at that time.

Q. What was you talking about when you spoke of it securing the land?

A. All I know is that Mr. James was talking along about that time that they were to give a certain amount of land to get the river secure. There was never anything done until about the time that I moved.

By the defendants:

Q. You don't pretend to know when the contract was let, do you?

A. No, sir; I don't know when this contract was let.

Q. But you know that it was after this conversation that the work was done?

A. Yes, sir; I mean that the work was done afterwards, because I know that the work was done.

Q. You don't know when the contract was let or what year the work was done in?

A. No. I know that it took a couple of years to do it.

Q. Some of the work may have been done a year before that conversation?

A. No, sir; I don't know about that. I don't know just what year the work was begun.

C. F. PETERS.

Signed in my presence the 8th day of Jan., A. D. 1885.

S. W. BLODGETT, *Examiner.*

Filed Jan'y 13th, 1885.

Opened by order of court May 25th, 1885.

A. S. THOMAS, *Clerk.*

562 Mr. MASON: "We next offer the deposition of N. McAlpine."

Which deposition was admitted and read without objection.

Said deposition is in words and figures as follows, to wit:

NICHOLAS MCALPINE, being called as a witness on the part of the complainants and being duly sworn, testified as follows:

N. McAlpine.

Q. Are you acquainted with the signatures of E. L. Bartlett and Sophia A. Cobb and A. D. Downs?

A. Yes, sir.

Q. I here present you with a lease marked on the back with a

figure one (1) and underneath the signature of Mrs. Street, and ask you, from your knowledge of their handwriting — you have seen this instrument as executed. From your knowledge of the handwriting of the persons who executed that instrument, how would you answer that question? Have you ever seen those parties write?

A. I have seen Mr. Bartlett write quite often and Mr. Downs and Mrs. Cobb a few times.

Q. Are you sufficiently acquainted with their handwriting to identify their signatures?

A. I can Mr. Bartlett and Mr. Downs, and I believe that to be the signature of Mrs. Cobb.

Q. Well, state who executed the instrument presented to you.

A. E. L. Bartlett executed for his father as attorney and agent, and Mr. Downs as administrator of the estate of S. A. Cobb, deceased, and Sophia Cobb for herself.

Q. Do you know that those signatures there attached to be genuine signatures?

A. Yes, sir.

Q. State where A. B. Bartlett was at the time this lease was signed.

A. Gone to (Colorado) Florida.

Q. In whose hands did he leave his business?

A. In the hands of his son, E. L. Bartlett.

Q. Is he the gentleman who practised law here at one time?

A. Yes, sir.

Q. Is he a young man?

A. Yes, sir.

Plaintiff- here offers the lease in evidence, to be included in and a part of the deposition of Mrs. Street.

Respondents object for the reason that the authority for its execution has not been introduced and it purports to be an instrument creating an interest in lands and executed upon the part of an attorney-in-fact.

N. McALPINE.

N. McALPINE called and testified again as follows:

Q. Give your name, age, residence, and occupation.

A. N. McAlpine; Wyandotte, Kansas; age, forty-nine (49); occupation, dealer in real estate.

Q. You are one of the plaintiffs in this suit?

A. Yes, sir.

Q. Go on and state in your own way in a narrative form your connection with this land marked on the plat to Joseph E. Snyder No. 9 by — of designating it, the plat filed by David E. James, your whole connection with this land, and so much of its history as is necessary.

A. I bought that land, all but a small fraction of it, from E. L. Bartlett, as attorney-in-fact for his father, A. B. Bartlett, and Mrs. Sophia A. Cobb. Soon after I bought it I authorized Mr. Mason,

563 as attorney for me, to take possession of the land and fence it, which he did. I authorized him to build two or three small houses on the land to rent; after that to lease the ground to other parties and build about a dozen different houses or had about that many tenancies. We have collected the rent and been in possession ever since.

Q. Did you give the date of your purchase?

A. It was in 1879 and about the middle of the summer we fenced it in and took possession of it.

Q. Well, how much improvement are there on there at the present time; what are the improvements on the land at the present time?

A. Well, there are about twelve to fifteen (12 to 15) little houses that is suppose- would average two hundred dollars ($200) a house, guessing as to the value of what the houses cost. Parties on the land did not put up very valuable houses, not knowing how long they would be there. There is a colored church there, and we leased a portion of the ground to Fowler Brothers for their hogs and cattle to pass over.

Q. What is the aggregate value of the improvements as placed on there at present by yourself or tenants, to the best of your knowledge?

A. Well, about fifteen hundred ($1,500) dollars; I can't say positively as to the value of the houses.

Q. Did you satisfy any tax claims?

A. Yes, sir.

Q. You obtained a settlement of the title from different persons holding claims on the land. How much have you expended for those purchases from time to time for the interests of different claimants?

A. Several hundred dollars; the exact amount I can't state; I have it all charged up, but I don't know that I was going to be asked that question.

Cross-examination:

Q. Aside from the expenditures in quieting title and getting rid of some other persons' claims, what was the original purchase price?

A. Somewhere about one hundred dollars ($100.00).

Q. According to the best of your recollection, outside of the expense of the litigation in this suit, what have you paid to other parties in quieting title?

A. At a rough guess, about five hundred dollars ($500) or six hundred dollars ($600).

Q. Five hundred dollars ($500) or six hundred dollars ($600)?

A. Yes, sir.

Q. Then, in your judgement, the aggregate amount of all the improvements put upon the land would be, perhaps, about fifteen hundred dollars ($1,500); is that correct?

A. Yes, sir.

Q. Now, what improvements have you placed on there, to say nothing of those placed there by other parties—that is, if you would take them off, what is the value of the improvements that you have placed there?

A. At a rough guess, four hundred dollars' ($400) worth of improvements—that is, what we have paid out of our own pocket.

Q. I understand there are some parties that have leased this ground and put up some houses on the land?

A. Yes, sir.

Q. You are the same McAlpine in a suit brought by Tourtelott, ain't you?

A. Yes, sir.

Q. Now, that case went to the supreme court of this State, did it not?

Objected to by plaintiff as incompetent and not the best evidence.

A. Yes, sir; it went to the supreme court.

564 Q. You are the party who was defendant in that case?

A. Yes, sir.

Q. That litigation was about this same piece of land?

A. Yes, sir.

Q. What was the character of the fence put around this land?

A. At the beginning?

Q. Yes, sir; at the beginning.

A. Partly post and board and part pole.

Q. What part was post and board?

A. I can't state exactly now. My recollection is that Mr. Mason built that fence while I was in Colorado.

Q. Did you pay for it?

A. Yes, sir.

Q. You say that you have an account of what you expended there?

A. Yes, sir; from that time.

Q. You have got that down in a book, have you?

A. Yes, sir.

Q. Where is that book?

A. It is at home.

Q. Now, is it not a fact, Mr. McAlpine, that the greater portion of that fence that was put around that land consisted of small posts and three stakes thereon or stakes driven in the ground?

A. No; there was a number of poles, but it was partly post and board.

Q. I asked you if it did not consist of small stakes driven in the ground and very small poles laid thereon; is not that true?

A. I call them posts.

Q. I asked you the question, and if it is not true you can say so; you know whether it is true or not.

A. What is your question?

Q. I asked you if the greater portion of that fence you speak of as put around that property was not made of small poles; posts or stakes driven in the ground, with three small poles nailed to the posts or stakes to make it substantial.

A. There was a portion of it posts and poles.

Q. Describe the character of that pole fence.

A. It was a good average fence, sufficient to turn stock or cattle. I do not say that it would turn hogs.

Q. You proceeded to fence that property immediately after you purchased the property you speak of?

A. Yes, sir.

Q. The very next day?

A. Immediately afterwards.

Q. What was the occasion of your very great haste in putting up the fence?

A. To get my money out of it and so as to have it occupied and shut off from the commons.

Q. No other parties owning property over there of that size had it fenced up at all?

Q. There were several lots fenced in there in that part of the town.

A. What was the consideration which you paid for that property?

A. About one hundred dollars ($100). That was the first money paid to Cobb and Bartlett.

Q. Just tell how that hundred dollars ($100) was paid.

A. I paid it in cash.

Q. They had a claim against you for about seventy-five (75) on account of mistake in taxes?

A. I don't know whether they had a claim of that kind or not against me; I guess not.

565 Q. Did you have a claim against them?

A. I think not.

Q. You didn't have any claim against them at all?

A. Yes, sir.

Q. You testified in that other attachment case you have spoken of?

A. Yes, sir.

Q. Was the testimony that you gave on that other trial true?

A. Yes, sir. I didn't owe them any money, and they did not owe me any money.

Q. Did you pay them in cash?

A. Yes, sir.

Q. To whom did you pay it?

A. To Bartlett and Cobb.

Q. Which one of them?

A. I don't know. I paid one of them.

Q. How did you pay it—by giving a check or *or* in cash.

A. I don't know whether I paid it by check or by cash.

Q. Then it was an absolute cash transaction for one hundred dollars ($100)?

A. That is my recollection.

Q. What was the property worth at that time?

A. I don't know.

Q. Well, approximate its value as near as you can.

A. In the year 1879?

Q. Yes; in 1879.

A. It was probably worth one thousand dollars ($1,000) an acre.
Q. Don't you know it was worth twice that?
A. No, sir; I don't.
Q. It was worth one thousand dollars ($1,000) an acre?
A. Yes, sir.
Q. How many acres were there?
A. About four (4) acres, I think; I think about four (4) acres. The exact amount I am not positive about. There may be only two (2) acres. I don't know the exact quantity.
Q. So you bought property worth two thousand dollars ($2,000) from Cobb and Bartlett for one hundred dollars ($100)?
A. Yes, sir.
Q. You thought that you got a good title from them?
A. Yes, sir; I thought so.
Q. Had you reason to doubt it?
A. No; I thought it was a good title.
Q. This man Cobb you speak of was a former representative in Congress?
A. Yes, sir.
Q. He was a good business man, was he?
A. Yes, sir.
Q. And Mr. Bartlett was a good business man?
A. Yes, sir.
Q. You owned vast amounts of property and knew the value of land and property and had two (2) acres adjoining that between that and Fowler's packing-house?
A. I believe so.
Q. They sold that property, did they not?
A. Yes; afterwards.
Q. How long afterwards?
A. Within a year afterwards.
Q. How much did he get for that, do you know?
A. I don't know.
Q. Don't you know that he got five thousand dollars ($5,000) for that?
566 A. No; I don't know it.
Q. What is your recollection about that?
A. I don't know anything about the figures it was sold at.
Q. You never heard what he got for it?
A. Well, I may have heard.
Q. You lived here all the time?
A. Yes, sir.
Q. You knew of such business transaction from day to day?
A. Yes; but I don't know what other persons may have done; I have business of my own to attend to.
Q. You have dealt largely in real estate, have you?
A. Yes, sir.
Q. Now, I want you to explain just exactly the difficulty between you and Cobb and Bartlett with reference to the state of the taxes existing at that time with reference to this property.

A. When I was county treasurer I sold that tract of land at tax sale to Mr. Cobb; I think he was a brother of S. A. Bobb.

Objected to by the plaintiff- as incompetent, irrelevant, and immaterial.

A. A subsequent year's taxes Mr. Cobb paid which I marked paid on the tax-roll, but neglected to enter what land on the tax-sales books. I refer now to the second year's taxes. That was two years' taxes against that land. My recollection is now that Mr. Traber came and redeemed a portion of the land that was sold to Mr. Cobb or a portion of it. My successor, not finding the second year's taxes entered on the tax-sales book for the subsequent tax sale, received from Traber and Norman just one year's taxes against that land. Well, holding this tax-sale certificate and not having received all of his money, it not having been credited for all the money he was entitled to on that account, Mr. Bartlett took me to task and said to me that I had received taxes and never marked them paid. Well, I told him if I had done so I was responsible; if I had done anything of that kind I told him to go down with me to the treasurer's office and see about it. Well, Mr. Drought was then in the office as county treasurer, and in looking the matter up I found out my mistake and said to Mr. Drought that Traber and Norman, however, had redeemed but had not redeemed from all the taxes. I says, You see by the tax-roll it is marked paid, but it is not marked on the tax-sale book as the amount that they have paid. I says, I have paid the money over to the county commissioners and I don't see how I can be made liable for my mistake. I don't owe them anything and consequently I don't owe the county anything. I said to Mr. Drought, It is your duty to enter up against that land and let those men come in and redeem for that year also. Mr. Drought refused to enter it up against the land. I asked him why he refused to enter it up and he said that he had but a short time before given a certificate to some party that all the back taxes had been paid up against that land; for that reason he would not enter it up. Well, E. L. Bartlett was standing there and I said to Bartlett that Traber and Norman had been fighting a good deal and, while I did not feel inclined to do anything, *and* I proposed to buy the land from them. I offered this sum of somewhere near one hundred (100) for a quit-claim deed of himself and Mrs. Cobb, if he could procure it from Mrs. Cobb, and he said that he would do it; so I got a deed from them.

Q. And that settled the difficulty?

A. Yes, sir; that is what I claim.

Q. Didn't you know very well that Traber and Norman claimed that property?

567 A. Yes, sir; I knew that Traber and Bartlett and Cobb contended for the same land.

Q. Was there any litigation at that time then in court?

A. Not that I am aware of.

Q. Don't you know, as a matter of fact, that there was not any litigation at all?

A. My recollection is that there was not any pending in court, but I know that both parties or I heard that both parties were claiming the land—both Cobb and Bartlett and Traber and Norman.

Q. What years were you treasurer of Wyandotte county, Kansas?

A. In 1868, 1869, 1872, 1873, 1874, 1875. I collected taxes for those years.

Q. You were not treasurer in 1876?

A. No, sir. Well, my term ran into 1876 pretty well up to the end of the year; then my term expired; that is my recollection; the books will show.

Q. When did you say? In what year did you make this purchase?

A. In 1879.

Q. The date of the deed corresponds with the date of the purchase?

A. Yes, sir.

Q. Now, you may state that if on the trial of the case of Tourtelott against you and others that we have spoken of—if you testified the same as you have to-day.

A. Yes, sir.

Q. What you stated at that time was true?

A. Yes, sir.

Q. That is the only case in which you have ever defended in which Tourtelott was plaintiff in the Wyandotte district court?

A. Yes, sir.

Q. What interest has Mr. Mason in this matter?

A. If he wins the suit he will have a half interest.

Q. You will pay the costs if you lose?

A. I suppose I will have to pay the costs.

Q. Who has paid the costs in this case so far?

A. Generally myself.

Plaintiffs object to any further examination on this line because it is not cross-examination of any evidence drawn out on direct examination.

Q. So Mason is an equal partner with you in this purchase?

A. I consider us equal partners; yes, sir.

Q. And have been all the while?

A. Well, I put in the most money and he puts in his talents against my money to a certain extent?

Q. To what extent?

Q. If we win the suit the costs have to be deducted from the value of the land.

Q. And the balance to be divided equally?

A. Yes, sir; that is it.

Q. Who has been collecting the rents from that property over there?

A. Most generally Mr. Mason.

Q. Mr. Tourtelott had purchased the property prior to your purchase, had he not?

A. Yes, sir.

Q. And had a house on there?

A. Yes, sir; my understanding is that he purchased from Traber and Norman their interest or a portion of their interest.

Q. They claimed to be the owners of a portion of it at the time you made this purchase from Cobb and Bartlett?

A. I believe they claimed to have the interest that you claimed.

568 Q. What we were claiming?

A. Yes, sir.

Q. Don't you know that in fencing that property you run out around Mr. Tourtelott's house and took in all the balance of the property?

A. My recollection is that we fenced around the house claimed by Tourtelotte.

Q. You ran clear around it?

A. Yes, sir.

Q. You undertook to get possession by fencing us in there?

A. That was my intention, to run a fence clear around it.

Q. Do you know whether you did it or not?

A. I authorized Mr. Mason to fence in the property. I did not go down to look at the property for a long time after it was fenced.

Q. Then you don't know anything about whether he fenced in the Tourtelott house or not?

A. Yes, sir; I do.

Q. At the time it was fenced in?

A. My recollection is now that this first fence—that there was a little house left outside of the fence and afterwards we run a fence around that house.

Q. Ain't you mistaken; was not that done by Mrs. Snyder?

A. No, sir.

Q. You don't know anything about that first fence at all?

A. Say I was in Colorado when that fence was built.

Q. You knew that Mr. Norman and I were both in Colorado at the time you bought this property?

A. I saw Mr. Norman in Colorado at the time I bought this property. I don't know where you was and I didn't care where you was.

Q. You did not undertake to take an undue advantage of our absence?

A. I could remind you where you were at that time. You were in Kansas City, because Norman showed me a letter that he received from you from Kansas City.

Q. Then the fence had already been built?

A. Yes, sir.

Q. You don't know when I returned to Kansas City?

A. No, sir.

By Judge GOODING:

Q. From whom did you obtain that quitclaim deed that you have spoken of in your former cross-examination at the time of your purchase?

A. First from Cobb and Bartlett.

Q. Then, as I understand you, this one hundred dollars ($100) that you paid grew out of this difficulty?

A. I paid him somewhere near one hundred dollars ($100) for the land out of my own pocket. I paid the county all the taxes I ever received, so that that money went for the land and didn't belong to the county or any one else but the land-buyer, myself.

Q. Well, Mason, your complainant here—was he here at the time you purchased this tract of land?

A. No, sir; he came here afterwards.

Q. Had you conferred with him prior to your purchase?

A. Mr. Mason did not know that I had bought that land at that time from Cobb and Bartlett at that time.

Q. You had not talked about the matter at all as to the legal status with him, had you?

A. I don't recollect whether we had or not. I didn't know that I was going to make that purchase at that time; I just bought it on the spur of the moment. I made him the proposition and Mr. Bartlett took me up.

Q. The question I asked you was whether you have any
569 recollection of having conferred with Mr. Mason about this land, even though you did not confer with him about the status of the title.

A. Well, we may have had some talk about that.

Q. This purchase was made in 1879, was it not?

A. Yes, sir.

Q. That was in midsummer, was it not?

A. Yes, sir; that is my recollection.

Q. There is nothing by which you can refresh your recollection?

A. The exact date I cannot state.

Q. Assuming that to be correct, when was it that this fence was made? When was it you directed him to make this fence?

A. In July.

Q. How long was it after you purchased, was it, that the deed was made? At once? Did you close it right up at once? The next day or some time thereafter you and Mason made the arrangement?

Q. As soon as you made the arrangement he immediately went to work making that fence?

A. Yes, sir.

Q. What was the purpose of building that fence at that time?

A. To make money out of the land by leasing it.

Q. Was it necessary in that character of land to get it fenced in order to make money out of it?

Q. Fencing the land would not depreciate its value. Would it appreciate it?

A. Yes, sir.

Q. You thought it would rent to better advantage to fence them in or run a fence around the land?

A. Yes, sir.

Q. It was not entirely fenced, was it?

A. All but this one little house. There was one house on land.

There was a little house in a place 50 by 100 that was not enclosed when the first fence was built.

Q. Has it ever been entirely fenced?

A. Yes, sir; all but one little corner.

Q. Then it never was fully enclosed?

A. All except fifty (50) feet on one corner.

Q. Then as a matter of fact it has not been completely enclosed by a fence?

A. All but that one little corner.

Q. Now, I have asked you the question whether that ground has ever been fenced—completely enclosed?

A. All except one little lot.

Q. Then a person on that little lot can pass in onto the ground and all over it—all over the premises. Is not that a fact?

A. We left the gate for our tenants to go out and in at.

Q. I am speaking of that little gap; I don't care about the gate. Now, where is that little gap—on what particular corner?

A. Near James street, on the alley.

Q. That would be the southeast or the southwest corner?

A. It would be the northeasterly corner.

Q. Tell me where it is. Is it on the east side or the west side?

A. It is on what I call the northeasterly corner.

Q. Now, then, in getting in there—I want to understand it. After getting in into that little gap I want to know what becomes of you. Do you go in a small lot there or can you go over the entire ground?

A. You can't get in at all.

570 Q. Then what do you mean by a gap?

A. I didn't say a gap. It was a house; a small house enclosed by a fence and we built our fence around it.

Q. So that in fact your lot was completely enclosed?

A. Yes, sir.

Q. You commenced your fence there and run it clear around so you enclosed *your fence there and run it clear around s so you enclosed* all the ground, including that which somebody else had fenced?

A. Yes, sir; we claimed all of the ground.

Q. And so do Tourtelott and Traber and Norman?

A. Yes, sir.

Q. Is it a fact that the ground is all enclosed now?

A. Yes, sir; that is what is intended and understood.

Q. Have you been familiar with that matter since that time?

A. Well, Mr. Mason has attended to that matter and has been the active man.

Q. You have not been there to see and do not stay down there to see whether it is fenced down there or not?

A. I know that it is fenced in.

Q. Has there been any new fence put there recently?

A. Yes, sir.

Q. Those persons who lease from you—Mr. Mason has the management of the leasing of the premises?

A. Yes, sir; and the collecting of rents.

Q. And drawing up the lease, and so forth?

A. Yes, sir.

Q. Now, Mr. McAlpine, I don't quite understand you and I will ask you again, was the one hundred dollars ($100) the original purchase price paid to Cobb and Bartlett?

A. I don't think that is quite the amount; I think it was ninety dollars ($90.00).

Q. Well, ninety dollars ($90.00), or whatever it is.

A. As I stated before, I bought all but a small portion of it then and I bought a portion or a fraction of it since.

Q. Then when you stated that for this first conveyance you paid one hundred dollars ($100) in the start and since paid in the several hundred dollars, you have reference to some subsequent purchase?

A. Yes, sir; all that we have paid out.

Q. From whom did you get deeds besides Cobb and Bartlett?

A. We got three-fourths (¾) of the Cobb interest.

Q. Didn't you buy all the ground that Cobb and Bartlett claimed in the first instance?

A. Well, there was a minor heir out—Nellie Cobb.

Q. At that time Col. Cobb was living, wasn't he?

A. No, sir; he was dead. We had bought Bartlett's interest and the widow's interest.

Q. What other interest have you bought and paid for subsequently to this?

A. Well, the county held titles—tax titles—on all of this lands, and then we got a tax title of Douglass and Richards.

Q. Your recollection is that you paid subsequent to this first payment perhaps four hundred ($400) dollars or five hundred dollars ($500) in one way or another?

A. Yes, sir.

By Mr. TRABER:

Q. Now, you say that at the time you made the purchase of Cobb and Bartlett you purchased from A. B. Bartlett, S. A. Cobb—the widow of Stephen A. Cobb?

A. Yes, sir.

571 Q. Then by that purchase you got three-fourths of your claim?

A. Yes, sir.

Q. Now, then, subsequent to that you bought from these infant children of Mrs. Cobb?

A. Well, one of them; there is still an interest of a minor child.

Q. You did buy the interest of one child?

A. That is my understanding.

Q. What was that?

A. The deed will show.

Q. Can't you tell what that interest was?

A. I can't tell without reference to the deed.

Q. How much did they hold their interest at; what was the actual consideration?

A. I can't state exactly; the deed will show.

Q. You don't remember about that at all, do you?
A. Well, I can guess at it or approximate at it.
Q. Well, approximate at it.
A. My guess is about a hundred and twenty-five dollars ($125.00). It may be more and it may be less.
Q. Now, Mr. McAlpine, is it not a fact that Mr. Bartlett owned and claimed a half interest?
A. Bartlett and Cobb owned that tract.
Q. You say that you bought it for one hundred dollars ($100)?
A. Yes, sir.
Q. Now, didn't you think you were getting the entire interest of both parties?
A. Yes, sir.
Q. Now, as a matter of fact, the consideration paid at that time was the consideration between you and these parties, including this heir. Didn't Mrs. Cobb agree to make it good?
A. We got a three-fourths (¾) interest by that first purchase.
Q. You intended to get it, did you not; you intended to buy Mrs. Cobb's interest as well as Mr. Bartlett's, did you not?
A. Yes, sir.
Q. They were equal partners?
A. They divided the money *pro rata*.
Q. Divided what money?
A. The money I paid.
Q. They divided the one hundred dollars ($100) between them?
A. Yes; *pro rata*.
Q. Now, was not the consideration in the deed for which you got the interest of this minor child and the interest of Mrs. Cobb the very consideration paid in the first place for the entire interest? Did it not include and was it not intended to include the widow's interest and the interest of the minor child for the one hundred dollars ($100.00)?
A. No, sir; we paid two moneys at different times.
Q. To Mrs. Cobb?
A. Yes; to Mrs. Cobb for Allie Cobb.
Q. You paid her for his interest one hundred and twenty-five dollars ($125.00)?
A. Whatever the deed says.
Q. Well, the deed says one dollar ($1.00).
A. Well, I know it cost us one hundred and twenty-five dollars ($125.00).
Q. You paid for one of the Cobb heirs' interest; a son or daughter?
A. Allie Cobb, a son, one of the minor heirs.
Q. Then you paid more for the Cobb interest than you did for the Bartlett interest?
A. I don't know.
572 Q. Why don't you?
A. The papers will show.
Q. Then what the deed shows is what you paid?
A. Yes, sir; my recollection is that we bought Allie Cobb's inter-

ests and the deceased child's interest at one and the same time, and paid about one hundred and twenty-five dollars ($125.00).

Q. Where is young Cobb now?

A. I can't tell you. He is somewhere in business on Third street.

By Mr. GOODIN: You bought at the time of your first purchase and subsequently all the interests of the Cobbs?

A. No, sir; there is a small interest in there yet.

Q. How is that?

A. There were some minor children.

Q. One of the children is dead and there is still another one.

A. We have got them all but one child.

Q. Is Mrs. Cobb claiming anything in this suit?

A. She claims the interest of her child.

Q. Well, how does she become a party to this claim?

A. Because she has an interest.

Q. Isn't she brought into this arrangement by you and Mason, and didn't she protest against it?

A. She did not.

Q. As a matter of fact you know that Mrs. Cobb was satisfied and didn't claim any interest in this land, and as a matter of fact isn't she simply a nominal party, and became such by your request?

A. Yes; she is a party by our request.

Q. And not by her own volition?

A. Mrs. Cobb claims an interest in this land.

Q. I understand how that is, but what I want to know is whether Mrs. Cobb is not a party to this proceeding as one of the complainants by an arrangement that you have made with her—that is, whether it is upon her own volition or upon your request that she be made a party?

A. The first time that I offered her that proposition I told her that we were going to carry this case through the United States district court, and requested her to help me through with it.

Q. Did you tell her that she had an interest in the land?

A. Yes; she knew that she had an interest in it, and she agreed to do it.

Q. With some hesitancy for fear that she would have to pay costs, and you agreed that she should not have to pay any costs?

A. Yes, sir.

Q. As a matter of fact, in the event of your success what are you to pay her by that agreement?

A. Give her her interest in the land.

Q. Have you told her that?

A. That is what the law will give her.

Q. I asked you what you were to give her by your agreement.

A. She can have her interest.

Q. You went and apprised her of the fact that she had some interest when you asked her to help you through?

A. I didn't have to tell her that; she already knew it.

Q. You solicited her to help you through?

A. Yes; to help fight it through.

Q. And she said that she would not have anything to do with any costs in the case?

A. Yes, sir; she did.

Q. Didn't you tell her it would strengthen your case to make her a party?

A. Yes, sir; and I think that is a fact too.

573 Q. Nothing was said between you and Mason and her as to what she was to receive in the event of success?

A. She is aware of what she will receive.

Q. The real intention is that you and Mason are to get it?

A. If we can purchase it and she wants to sell, and if she don't want to sell she can have her interest.

Further redirect examination:

Q. Mr. McAlpine, do you recollect on a former trial of this case that Mr. Bartlett gave in some testimony about the time that he should have received some redemption money?

A. He drew the money. He drew the money after I had purchased the land.

Q. What leads you to think that—what impresses you with that fact?

A. Well, that tax certificate was to be assigned to us.

Q. In the contract with you and Bartlett you were to have the tax certificate assigned to you?

A. That is my recollection.

Q. Did Mr. Bartlett agree to have that tax certificate assigned to you that had been issued to a brother of S. A. Cobb?

A. That is my recollection.

Q. Well, did he carry out that stipulation?

A. He did not.

Q. What did you do at the time with the redemption money?

A. He received the redemption money himself.

Q. When—how long after you bought?

A. I don't know. I suppose in a few weeks.

Q. By the terms of the contract between you had he any right to do that?

A. No, sir.

Q. The certificate was redelivered to him?

A. Yes, sir.

Q. That, then, was a violation of the contract?

A. Yes, sir.

Q. What was the financial circumstances of young Bartlett in regard to his necessities for money about the time of your purchase?

A. He was hard up for money.

Q. Did he say that he would accept the proposition that you tendered him?

A. Yes, sir.

Q. He procured Mrs. S. Cobb to sign the deed?

A. Yes. The trade was closed the next day or as soon as we could get around to it.

Q. You paid over the money?

A. Yes, sir; I paid over the money.
Q. Did he give you the deed?
A. Yes, sir.
Q. Where was his father, A. B. Bartlett, at that time?
A. Down South; located in Florida.
Q. Why was he there?
A. Well, his health was poor and he went there to get his health.
Q. How long had he been there?
A. How long had he been there when this happened?
Q. Yes, sir.
A. About a year.
Q. Was his health impaired and broken down?
A. Yes, sir.
Q. Was he fit to do business?
A. He entrusted all his business to his son up here, as I understood it.
Q. He gave his son a power of attorney to act for him?
574 A. Yes, sir.
Q. As a matter of fact, what was the matter with A. B. Bartlett that he went to Florida?
A. I don't know what his disease was, but he had failing health.
Q. Did he ever come back here to live?
A. I think he has never been back since he went out.
Q. Where was S. A. Cobb at that time?
A. I don't know.
Q. Was S. A. Cobb an able man or otherwise?
A. Yes, sir.
Q. What was the ability of A. B. Bartlett, the old gentleman?
A. He was a first-class lawyer, I considered, as far as mental capacity was concerned.
Q. Mr. E. L. Bartlett, was he as good a business man and manager—lawyer—as his father?
A. No, sir; he was not considered the lawyer his father was.
Q. Was it as easy for him to analyse close real-estate problems as his father?
A. My opinion of the man as a lawyer was that he was a very poor lawyer as compared with his father.
Q. What he could not understand he was apt to condemn, was he?
A. Yes, sir.
Q. Well, then, as between you and Cobb and Bartlett, you consider the contract you made a fair one?
A. That is the way I look at it.
Q. You took no underhanded advantage of them?
A. No; when I purchased this land I expected to have this lawsuit. I expected to have this very fight come up.
Q. Was that the reason you offered that price?
A. Yes, sir; that is the reason I bought it at the price stated.
Q. You paid them all they asked for the property?
A. I made the proposition and he accepted it and made the deed the next day or the day afterwards.

Q. You considered that you was doing no wrong because you was getting the property cheap?

A. No, sir; I don't consider that I done any wrong. When I am to pay my money for anything I always try to get it as cheaply as I can and when I sell I try to get all I can.

Q. If they had wanted to give you that land it would have been proper for them to have done so—if S. A. Cobb and Mr. Bartlett had given you a deed for this land as a gift it would have been no difference?

A. No, sir.

Q. That is the state of your feelings at this time?

A. Yes, sir.

Further cross-examination:

Q. I will ask you if Bartlett did not tell you at the time that he made this sale to you that Cobb and Bartlett did not claim any interest in this land.

A. He did not, most emphatically.

Q. Then if he swore to it on a former trial between you and Tourtelott it is not true?

A. It was not.

N. McALPINE.

575 WILLIAM M. TWEEDDALE, a witness called on behalf of defendants, being first duly sworn, testified as follows:

Direct examination by Mr. MASON:

Q. Here is a plat, a surveyed plat, of Kansas City, Kansas, with a record attached thereto, filed in this cause as a part of the evidence, a certified copy of the plat on file at the office of the register of deeds of Wyandotte county, Kansas.

Now, somewhere down on the line about five (5) inches south of where the State line strikes the Missouri river is the location of the southeast corner of section eleven (11), township eleven (11), range twenty-five, and east of this bottom.

Now, the north line of this tract of land there, the tract which lies between the tract marked Thomas H. Swope and the tract marked G. B. Wood, in the northerly part of the plat, on the north line of that tract of some forty-three (43) and a fraction acres, bounded on the east by the Missouri river and on the west by the Kansas river and on the north by the lands marked Thomas H. Swope and on the south by the lands marked G. B. Wood, the north line of this forty-three (43) acre tract as is shown on this plat is conceded in this suit to be thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), or, in other words, a line drawn north from the said section corner north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet would reach this northerly line of said allotment of forty-three (43) acres, which was the allotment to David E. James in a former par-

tition suit. That northerly line of said allotment runs at right angles to this line north twenty-eight and one-half (28½) degrees west, and its bearing is south sixty-one and one-half (61½) degrees west. Now, then, I will call your attention to the location of James street on this map or plat as you see it located in its entire length.

Now, I want you as an expert—you are a surveyor, are you not?

A. Yes, sir.

Q. And you are familiar with plats and have a knowledge of boundaries?

A. Yes, sir; to some extent.

Q. I wish you would help me to locate the description of the deed which I will read to you. I will read it to you. It is a description from a certain bankruptcy deed, which bankrupt deed is dated the 20th day of October, 1871, and I want to read it to you and have you help me locate it, the lands, as well as you can. Beginning at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11) township eleven (11) south, of range twenty-five east, of the sixth principal meridian; it is some distance easterly of James street, the section corner. Commencing at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), what line would you reach?

A. Here (indicating on the plat) the point indicated was where the northerly line of the forty-three (43) acres piece strikes the Missouri river, the forty-three (43) acres piece in the allotment of D. E. James.

Q. Which line, the northerly line?

A. That would depend on where your distance was.

Q. It would strike the northwardly line of this tract, marked Jos. E. Snyder, the line which runs along its northerly side?

A. It would not make any difference.

576 Judge BRUMBACK: Put the question so I can object to it.

Q. Would it strike this line on the north line of the allotment of forty-three (43) acres which I have spoken of?

A. Suppose this distance (indicating on the plat, pointing to the line from section corner named to northerly line of 43-acre tract) is thirty-six hundred and four (3,604) — up to that (indicating on plat), the northerly line of the forty-three (43) acres allotment of D. E. James' point, of course it is practically the same, and it would be on that (indicating on the plat) line. The line last indicated was the northerly line of the allotment to D. E. James, which also forms the northerly line of the tract marked Jos. E. Snyder.

Judge BRUMBACK: "That don't mean anything."

Q. Well, assuming that the quarter (¼) section corner, the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), is down here on this plat (indicating *of* S. E. cor. sec. 11, 11, 25, marked 2 0 on plat) six (6) inches below where the State

line strikes the Missouri river and near this little triangular block right below the name of G. B. Wood on this plat, a little more easterly than the block and easterly of James street, and assuming that these streets run north twenty-eight and one-half (28½) degrees west, and assuming also that the section corner is thirty-six hundred and four and one-half (3,604½) feet from the northerly line of the allotment of forty-three (43) acres before spoken of, marked on the plat by the name of Jos. E. Snyder, now, will you please indicate where that line will go, to the best of your judgement? These street sare all north twenty-eight and one-half (28½) degrees west; the distance of the line is the same; they run parallel to the street.

Q. What is the angle?

Q. The call is as follows: Beginning at a point north twenty-eight and *and* one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11) south, of range twenty-five (25) east.

A. And these streets are that angle?

Q. Yes, sir.

A. Well, very well; it would run up until it intersects with this line (indicating the aforesaid north line of D. E. James' allotment and line forming northerly boundary of Joseph E. Snyder tract).

Q. What line?

A. The line at the distanee of the call without any regard to names. If it is a line of definite length it will be there (indicating a point on said northerly line of D. E. James and Snyder lands near the Missouri river edge).

Q. It is here in this description "the northwesterly line of James street extended." Now, where will you end?

A. Over on James street.

Q. Would you go to James street by the most direct route that you could get there?

A. I would go there in a straight line.

Q. You would go to James street?

A. I would go to James street and I would simply change my course so as to strike James street when I reached that point up there (indicating *of* point on the Missouri river where afore-
577 said northerly boundary strikes it). The rule I have been governed by is this, that course and distance both are variable as against monuments and as against boundaries.

Q. That is the rule of the surveyors, is it, as well as the lawyers?

A. It is mine.

Q. The next part of the call is, "As shown by the plat of Kansas City, Kansas, on file in the register of deeds office of the said county of Wyandotte, on page 9 of Book of Plats, filed on the third day of May, 1869, by David E. James and others." Now, we are on James street, are we?

A. Yes, sir.

Q. Please indicate with your finger or pencil, so we can make it intelligibly here, somewhere near the point of James street where you are.

A. It is where James street would intersect the line of the distance given here (indicating).

Line being the northerly lines of said—the north line of the J. E. Snyder tract. It would be the distance indicated from this point (indicating)—point on aforesaid northerly line near the Missouri river—to the intersection of that line at the designated site on James street.

Q. Will you please put your pencil where you think you would now set your instrument when you got to James street?

—. There (the witness indicating on the plat the point).

And that point indicated lies just where the line of James street intersects the northerly line of the D. E. James allotment and northerly line of the tract marked Jos. E. Snyder.

Q. Would it be on that north line of said allotment, which runs north of the tract marked Jos. E. Snyder?

A. It would be on the line, the distance of which is designated as being so many feet from the initial point.

Q. Put your pencil there and hold it there. (The witness does it.)

The witness puts his pencil at the point on the line of D. E. James' allotment reached by the call north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from southeast corner of section eleven (11), township eleven (11), range twenty-five (25).

Q. Will that line be on the line which runs along the northerly margin of this little rectangular tract marked Jos. E. Snyder?

A. I cannot tell you about that. Put it in this form: It will be on the line, the distance designated by the number of feet. You can locate the Jos. E. Snyder tract afterwards.

Q. I am only saying that it is marked Jos. E. Snyder.

A. You start from a central initial point and go a certain distance to a certain line. It may be the nearest line and it may not. You strike it out here at so many feet (pointing to where aforesaid line strikes the Missouri river or near that point).

Q. When, unless on this line?

A. I have struck the line when I have got to it. I find instead of taking my way out here (indicating)—(pointing on Missouri river point aforesaid)—I find that it calls for the boundary line of James street, and then I am obliged to go in there, without regard to distance. (Witness pushes his pencil westerly along the northerly line of D. E. James' allotment.)

Q. The next part of the call now—put your pencil on your old point, where your instrument stood: "Then south sixty-one and one-half (61½) degrees west." Which direction will you take now? I have explained to you heretofore in this description that the evidence shows that these lines are run slantingly westerly and run in a direction with all of them of south sixty-one and one-half (61½) degrees west, and that this north line in this allotment of forty-three (43) acres, the north boundary of this Joseph E. Snyder tract, also runs south sixty-one and one-half (61½) degrees west, assuming that to be the fact.

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A. I would run a line at right angles to this line (indicating the line which runs north twenty-eight and one-half (28½) degrees west aforesaid). I would say that this line is fixed; its position is understood, and I would follow that line (indicating the line along northerly boundary of D. E. James and Snyder lands).

Q. Thence south sixty-one and one-half (61½) degrees west. Supposing six hundred and forty (640) feet and two (2) inches would take you beyond the westerly edge of this tract marked Jos. E. Snyder?

A. Does it give you any object?

Q. Not particularly.

A. Just an absolute distance.

Q. The point you started on would be on which edge of James street?

A. The one designated—say this one (indicating), easterly dedge.

Q. On the east edge?

A. Yes, sir.

Q. You would then go from the east edge of James street in a direction south sixty-one and one-half (61½) degrees west six hundred and forty (640) dfeet and two (2) inches?

A. I would go the measured distance unless there was an object. Do you give any boundary?

Q. No, sir; no monument fixed.

A. I would be governed by the distance in that case.

Q. Mr. Tweeddale, it is established in this case that the tract of Joseph E. Snyder on this plat is five hundred and eighty (580) feet long.

A. What is the call? I will have to run to that point. I am to go six hundred (600) feet, and I don't care whether Joseph E. Snyder owned the land or not I would go that distance.

(Reading:) "Thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet."

Q. And you would come back the same distance as Armstrong street runs?

A. Yes, sir; I would come back that way.

Q. How far?

A. What distance do you call it?

Q. Three hundred (300) feet.

A. Then I would come three hundred (300) feet.

Q. Three hundred (300) feet reaches to the bound of the lower southerly line of this Jos. E. Snyder tract. Now, "thence north"—where is your instrument?—there (indicating point near Armstrong street where southerly line of tract marked Jos. E. Snyder intersects same)—sixty-one (61) degrees east six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet to the said northerly line of James street extended. Where will you come now—back to the same line of James street extended?

A. Yes, sir.

Q. Thence north twenty-eight (28) degrees west on said northwesterly line of said James street extended three hundred (300) feet

to the beginning. Now, what line will you run on for that eastern boundary?

579 A. Up there (indicating), the easterly line of James street extended as shown on the plat.

Q. Then the line you would last run is the easterly boundary of that rectangular piece of land?

A. Yes, sir.

Q. How long is that tract?

A. Six hundred (600) and some odd feet, I believe you have just mentioned.

Q. Now, I will call your attention to another part of this description in this bankrupt deed. This says containing four (4) acres. Does that contain four (4) acres?

A. Four and four-tenths ($4\frac{4}{10}$) acres.

Q. We will take this description, also beginning at the same point as last above, thence north sixty-one and one-half ($61\frac{1}{2}$) degrees east to Missouri river. Where will that take you?

A. There (pointing to point where northerly line of this James allotment strikes Missouri river).

Q. Thence along said river south twenty-eight and one-half ($28\frac{1}{2}$) degrees east three hundred (300) feet?

A. Yes, sir (pointing to a point three hundred (300) feet down the edge of the river).

Q. Thence south sixty-one and one-half ($61\frac{1}{2}$) degrees west two hundred and thirty-one (231) feet to the northwesterly line of said James street extended. You will go to James street extended, will you?

A. Yes, sir.

Q. Thence north twenty-eight and one-half ($28\frac{1}{2}$) degrees west three hundred (300) feet to the place of beginning?

A. Yes; to the place of beginning (the witness indicating the place on the map, being the point where easterly or northerly line of James street intersects northerly line of D. E. James allotment and northerly line of tract marked Jos. E. Snyder).

Q. This shows, Mr. Tweeddale, a tract of land between the first tract described and the Missouri river. Is there——

A. There seems to be.

Q. About how much land does that contain?

A. Give me the measurement.

Q. The distance on the width is three hundred and thirty-one (331) feet. Assuming the distance from the river boundary to be uniform, about how much land was there in the piece?

A. One and fifty-nine hundredths (1.59).

Q. Not quite two (2) acres?

A. No, sir.

Q. Supposing in these calls I have read to you the word northerly line of James street read instead of the word northwesterly line of James street, would that make any difference in the construction you would put upon these calls?

A. No, sir; it would indicate direction.

Q. You would go to some line on James street, at all events?
A. Yes, sir.

Judge DAY here questioned the witness:

Q. Mr. Tweeddale, I will read the description in this bankrupt deed that has been read to you or referred to. The first description, which is as follows: Beginning at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven
580 (11), township eleven south, of range twenty-five (25) east, of the sixth principal meridian, on the northwesterly line of James street extended, as shown by the plat of Kansas City, Kansas, on file in the register of deeds' office, in said county of Wyandotte, on page nine (9) of the Book of Plats, filed on the third day of May, A. D. 1869, by David E. James and others, thence south sixty-one and one-half (61½) degrees west six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet to the said northwestwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west on said northwesterly line of James street three hundred (300) feet to the beginning, containing four (4) acres, more or less. Now, take that description and state what are the monuments, if any, designated in the description.

A. James street and the corner below.

Q. Now, following that, I read the following additional descriptions: And also beginning at the same point as last above and thence north sixty-one and one-half (61½) degrees east to the Missouri river; thence down along said river south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one feet to the northwestwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west three hundred (300) feet to the beginning, containing two (2) acres, more or less. State, if you please, what, if any, monuments are designated in this last description.

A. The Missouri river and James street.

Q. Assuming now that the point designated on this plat as the southeast corner of said section eleven (11) is thirty-six hundred and four and one-half (3,604½) feet from this lone extending west, which would pass along the northerly line of the tract designated as the Jos. E. Snyder tract on this plat, from the description first read would this tract of land marked on this plat of Kansas City, Kansas, designated by the name of the Jos. E. Snyder tract, be included in the first description in this bankrupt deed?

A. Yes, sir.

Q. You say that it would?

A. Yes, sir.

Cross-examination.

Questions by Judge BRUMBACK:

Q. Have you read the description of the land on this plat attached to the plat?

A. I have not.

Q. You have heard it read?

A. I heard what was read to me.

Q. He has not read any of it to you. Have you read the description of the land platted on this plat?

A. No, sir.

Q. I will now read to you a paper attached to the plat, a description of the land, owned by David E. James, covered by the plat: Beginning on the bank of the Kansas river (assuming the point called for is the intersection of the southerly line of the tract marked T. H. Swope with the easterly bank of the Kansas river), thence north sixty-one (61) degrees and fifty (50) minutes east three hundred and forty-eight (348) feet. Assuming that the southerly line of the Swope tract from the river runs north sixty-one and one-
581 half (61½) degrees, where will that bring you?

A. Here. (The witness indicates.)

Q. Assuming that it is three hundred and forty-eight (348) feet from the Kansas river to the tract marked Jos. E. Snyder; thence south twenty-eight (28) degrees and ten (10) minutes east three hundred (300) feet to the most southerly corner of the Jos. E. Snyder tract; thence north sixty-one (61) degrees and fifty (50) minutes east five hundred and eighty (580) feet.

The witness indicates the point on the plat.

Q. That will take you to the center of James street extended?

A. It will take you here (indicating).

Q. Figure the distance and see if it does not take you there. Now, please add together along the south line of the Swope tract three hundred and forty-eight (348) feet, assumed to be the distance from the Snyder tract to the Kansas river, and assume that the Snyder tract is five hundred and eighty (580) feet, how much more will it take to make twelve hundred and ninety-six (1,296) feet?

A. Three hundred and sixty-eight (368).

Q. Then the three hundred and sixty-eight (368) would be three hundred and sixty-eight (368) feet along the southerly line of the Swope tract, easterly towards the Missouri river?

A. Yes, sir.

Q. The description read to you from the bankrupt deed runs in part, Beginning at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11). If you assume that the southeast corner of section eleven (11) is three hundred and sixty-eight (368) feet from the center line of James street, measured on the line running north sixty-one and one-half (61½) degrees east, and it is on a straight line, then trace out on this map this line thirty-six hundred and four and one-half (3,604½) feet long.

A. From there (indicating), running in that direction at whatever the angle might be.

Q. The line runs from the southeast corner of section eleven (11) north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet. How far easterly from the center line of James street will that bring you?

A. You have not given me the direction of any of these streets.

Q. I have assumed that they run in the same course.

A. Then it would be three hundred and sixty-eight (368) feet.

Q. Assume that James street runs from a straight line north twenty-eight and one-half (28½) degrees east, that course and distance will then bring you to a point three hundred and sixty-eight (368) feet from the center line of James street?

A. Running that course and distance.

Q. The description above will bring you to a point three hundred and sixty-eight (368) feet from the center line of James street and easterly from that at right angles?

A. Yes, sir.

Q. Now, with these elements, please calculate what will be the angle if you run the line from some beginning point, the southeast corner of section eleven (11), to the second lines of James street.

A. I have not the tables to compute the angles with; I will simply mention, however, that the rule observed in all these cases and the rule which I have observed is that a very great discrepancy will not only in angles, but in distances, be allowed if you are going to fixed monuments; it would not make any difference if five or
582 twenty-five degrees; they would still be violated to fulfill these conditions.

Q. Can you calculate it?

A. Yes, sir.

Q. Will you please do so?

A. I will, sir.

Q. I wish you would do so and let us know the result. The elements are these: Assume that James street runs from a straight line north twenty-eight and one-half (28½) degrees west. Now, you begin on the straight line at a point three hundred and sixty-eight (368) feet from the center of James street, measured at right angles to the street. Now, you run for a distance of thirty-six hundred and four and one-half (3,604½) feet north so as to strike the two lines of James street, the one nearest the Missouri river and the other close to the Kaw river, and I want to know the angle of each line.

A. It is three hundred and sixty-eight (368) from the center.

Q. Yes, sir; and the distance will be three hundred and seventy-eight (378). *Q.* The distance thirty-six hundred and four and one-half (3,604½) feet.

A. You want the angles?

Q. Yes, sir. This is the most easterly line of James street (indicating on the plat), and assuming that it runs from a straight line north twenty-eight and one-half (28½) degrees west.

A. I should call this one.

Q. The one towards the Missouri river?

A. Yes, sir.

Q. Which is the westerly line of James street on that assumption?

A. The opposite direction.

Q. Towards the Kansas river?

A. Yes, sir.

Q. What is the northwesterly line of James street?

A. Here?

Q. Yes; on that assumption.

A. That would be the westerly line. (Witness indicates on the plat.)

Q. That would — the line of the street nearest to the Kansas river?

A. Yes, sir.

Q. Now, on this assumption that James street runs from said line north twenty-eight and one-half (28½) degrees west and that a line run from the southeast corner of section eleven (11), which is three hundred and sixty-eight (368) feet, measured at right angles, to the center of the line of James street and easterly thirty-six hundred and four and one-half (3,604½) feet on an angle north twenty-eight and one-half (28½) degrees west, will reach the southerly line of the tract on the plat of Kansas City, Kansas, marked John H. Swope, with these elements calculated you must know how far a line of that length, drawn from the southeast corner of section eleven (11), would strike the most easterly line of James street extended from the southerly line of the Thomas H. Swope tract?

A. Yes, sir.

Q. Are you familiar with plats and maps of towns and cities and additions to the same?

A. To some extent.

Q. Does this map of Kansas City, Kansas, indicate the existence of a street north of the northerly end of Wood street at any point, assuming that the proprietors did not own the land marked Jos. E. Snyder or the land marked James F. Joy?

A. Is there any indication of streets in this tract?

583 Q. Yes, sir.

A. Yes, sir.

Q. Assume that the proprietors of the addition did not own between the J. F. Joy tract and the center of James street extended, does that indicate that there was a street along the westerly side of the Joy tract?

A. Yes, sir; the whole line indicates it. If it was not it would have been drawn out. It would indicate that there might be a road there.

Q. There is no part of the Jos. E. Snyder tract taken for streets?

A. No, sir.

Q. And how much of the Joy tract?

A. It would look as though half the street was; the fact of run-

ning this (indicating) through there indicates that that was the boundary line.

Q. It is somewhat doubtful whether there was an intention to mark a street there. Would that be ascertained by determining who owned the land, whether it belonged to the proprietors or outsiders?

A. No, sir; it is possible that there is a road through there.

Q. I assume that there is no road and was not at that time; then what?

A. I do not know; if the proprietors had not dedicated it and there is no road through there it may remain as it is.

Q. I wish to read the whole of the description of the tract of four (4) acres, more or less, in the bankrupt deed and get your opinion as an expert whether there is any reference whatever to the boundaries of the tract marked on the plat of Kansas City, Kansas, Jos. E. Snyder, situated in *in* Wyandotte county, Kansas, described as follows, to wit: Beginning at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and *four* (3,604¼) feet from the southeast corner of section eleven (11), township eleven (11) south, of range twenty-five (25) east, of the 6th principal meridian, on the northwestwardly line of James street extended, as shown by the plat of Kansas City, Kansas, on file in the register of deeds' office of said county of Wyandotte, on page nine (9) of the Book of Plats filed on the 3rd day of May, 1869, by David E. James and others, thence south sixty-one and one-half (61½) degrees west six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet to the said northwestwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west on said northwestwardly line of James street three hundred (300) feet to the beginning, containing *containing* four (4) acres, more or less. Is there any reference whatever to that Jos. E. Snyder tract in that description?

A. This locates it by saying that it is on the line of James street extended; James street might have stopped; the conditions have been fulfilled.

Q. My question is whether there is any reference to the Jos. E. Snyder tract, not for James street. The call is for James street. There is no reference in that description to the Jos. E. Snyder tract.

Q. You have described it; repeat it.

Q. Beginning at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11) south, of range twenty-five (25) east, of the 6th principal meridian, on the northwestwardly line of James street extended——

WITNESS (indicating on the plat): It would be that line
584 up there extended.

Q. —as shown by the plat of Kansas City, Kansas, on file

in the register of deeds' office of said county of Wyandotte, on page nine of the Book of Plats filed on the 3rd day of May, 1869, by David E. James and others, thence south sixty-one and one-half ($61\frac{1}{2}$) degrees west six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet; thence south twenty-eight and one-half ($28\frac{1}{2}$) degrees east three hundred feet; thence north sixty-one and one-half ($61\frac{1}{2}$) degrees east six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet to the said northwestwardly line of said James street extended; thence north twenty-eight and one-half ($28\frac{1}{2}$) degrees west to said northwestwardly line of James street three hundred (300) feet to the beginning. There is no reference to the Jos. E. Snyder tract there; nothing calling for the Jos. E. Snyder tract?

A. Your description seems to start up here from a point which would be the center of the prolongation of James street.

Q. But there is no reference to the Snyder tract?

A. It covers all that tract (indicating).

Q. By taking the distance you strike the northwestwardly line here (indicating on the plat) some distance from the northerly line of the Jos. E. Snyder tract; then you run a course parallel to it.

A. It don't say that. The requirements are that you go to a certain point, and there is the course and distance.

Q. It don't call for any line?

A. You go a certain distance, as in the call, here (indicating).

Q. You have said, I believe, that monuments governed as against courses and distances.

A. Yes, sir.

Q. Will you please tell us what a monument is, as you understand it?

A. It may be a stone put in the land and it might be a stick. Anything that could be identified or determined. It might be a boundary or it may be a given point on another man's land; anything natural or artificial.

Q. A river bank?

A. Yes, sir.

Q. A boundary is something tangible that could be seen?

A. Yes; that could be found.

Redirect examination.

Questions by Judge DAY:

Q. Assuming the southeast corner of section eleven (11) to be where it has been designated on the plat, if you were called upon to survey the tract of land described in the bankrupt deed would you follow the course designated from the initial point clear to the point at the end of the distance thirty-six hundred and four and one-half (3,604½) feet from this point, and then, to ascertain where it would intersect with the northwestwardly line of James street extended, run at right angles, or, assuming that the description designated the northwestwardly line of James street as a monument, would you from the initial point run directly to that monument?

A. I would not do that, Judge. There is one thing about surveying—and I am assuming that you are not a surveyor—and that is that there is no such thing as fixed rules. What I would do would be to ascertain what I could about the line, and if I could get hold of the monument and it was ascertainable, well and good. The call is for a line of a certain length, and that line don't satisfy the requirements, and I should ascertain what the boundaries of the lines were—and I am doing that all the time—and I found that
585 the conditions were satisfied by my going there (indicating point where James street intersects northerly line of allotment to D. E. James and northerly line of tract marked Jos. E. Snyder, indicating on the plat) I should go there althought it might vary several feet, and if the conditions were satisfied by my going there (indicating on the plat same point) I should still go there.

Q. At right angles?

A. Without any regard to right angles because that is the chosen boundary.

Q. You mean that you would go on that line?

A. I would not have anything to do with right angles.

Q. You would disregard distances?

A. I would disregard distances and I would disregard angles.

Judge DAY: Now, the description and explanatory notes attached to this plat are as follows, so far as the location of the land is concerned. Description and its explanatory notes, dedication, etc., in plan of Kansas City, Kansas, in Wyandotte county, Kansas; description and dedication of the town site of Kansas City, Kansas. The town site of Kansas City, Kansas, is situated upon part of fractional sections ten (10), eleven (11), and fourteen (14), in township number eleven (11) south, of range number twenty-five (25) east, in the county of Wyandotte, State of Kansas, lying north of the old bed of Turkey creek, east of the Kansas river, and south of the Missouri river, and bounded on the east by the State line between Kansas and Missouri, and comprises the following-named tracts, namely: Two tracts of land belonging to Geo. B. Wood, designated in accompanying plat, and one being colored red and one being a dark-colored green; two tracts of land belonging to D. E. James, designated in the plat by one being colored green and one tract colored red, and one tract of land belonging jointly to Geo. B. Wood and N. McAlpine, designated in the plat by being colored green, excepting that part of the lands of Geo. B. Wood situated and lying between the lands of Thomas Ewing on the south and the lands of James F. Joy on the north and east and James street on the west, being a piece of land sixty-six and one-half ($66\frac{1}{2}$) feet by three hundred and thirty-four (344) feet, and the above is a part of the land lying between lands of Thomas Ewing on the south and the lands of D. E. James on the north and between Armstrong street and the Missouri river, marked in the plat reserved for private purposes, and also lands of D. E. James between Armstrong street and the Missouri river, and bounded on the south by the lands of Geo. B.

Wood and on the north by lands of T. H. Swope; also marked reserved for private purposes. The above-named tracts are described and bounded as follows, namely: Now, what I wanted to get at was the exact location of these lands on these descriptions.

Mr. MASON: One moment. You spoke in your evidence on cross-examination about disregarding distances and courses. Now, in one sense, do you not, in order to fix a distance in a certain direction which you are to get, north twenty-eight and one-half (28½) degrees west, you do regard distance?

A. Yes, sir; you follow it in a general way, but you are not tied to it as strictly as you are in law.

Q. Again, in disregarding distances or rather courses can you not still consider that there is another call in the deed, which, after you get to this southerly line of the Swope allotment, calls you peremptorily to James street?

A. I would not do it unless there was some other evidence; if I could explain it without another call.

586 Mrs. CORNELIA STREET, a witness called in behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by Mr. MASON:

Q. Mrs. Street, where do you reside?

A. I reside in South Wyandotte.

Q. How long have you resided in Wyandotte county?

A. For fifteen (15) years.

Q. Were you in Wyandotte county in the year 1874?

A. Yes, sir.

Q. Do you understand plats?

A. No, sir; I do not understand.

Q. State if you once occupied some property in Kansas City, Kansas.

A. Yes, sir.

Q. Where was it located?

A. My house that I lived in was between James and Wood streets.

Q. About how far from Wood street and about how far from Armstrong street?

A. Armstrong street is a considerable ways, of course. I was between Wood street and James street.

Q. Which direction from the present iron bridge?

A. It was rather southeast.

Q. About how far and in what direction from the present site of the Fowler packing-house?

A. It was rather southwest, I should judge.

Q. Do you recollect that you had a lease of some kind in that vicinity at any time?

Judge BRUMBACK: I would like, if the court please, to get an idea what they are trying to prove.

A. Mr. MASON: That some one was living on the ground and continuous possession.

Judge BRUMBACK: We object, then. She did not live on it.

Mr. MASON: We have the testimony to show it.

The COURT: Do you say that you will show it, Mr. Mason?

Mr. MASON: Yes, sir. She lived on the ground of which this land in controversy is a part. I intend to show by this witness that she forms a link in a continuous chain of possession from the early spring of 1874 up to the time of our purchase, and that there was a tenant living on that very land named Enos Long, whom she well knew, who was on that same land at the time of the service of this attachment and was an occupant of the same tract, and then to show by her testimony and the testimony of others to be introduced a continuous line of possession from that time up to the present or up to the time of the purchase.

The COURT: In other words, you desire to show that the grantors under whom you claim were exercising rights of ownership?

Mr. MASON: And that at the time the attachment was served there was an occupant, one of the persons in this chain of title, actually upon the land and on the ground at the time of the attachment suits.

The court sustained the objection to the question; to which ruling of the court defendants at the time excepted.

Q. Now, Mrs. Street, I will call your attention to a lease attached to these papers and ask you to look at it. It is a lease which is dated on the 21st day of October, A. D. 1878, and it is attached to the record of depositions and marked Exhibit "K." After examining that do you recognize that as the lease under which you held?

A. Yes, sir.

Q. Do you know the handwriting of the signatures to the lease?

587 A. Yes, sir.

Q. Whose names are signed there? Can you read them?

A. Mrs. Cobb. I can tell that.

Judge BRUMBACK: We admit that the document is genuine.

Mr. MASON: We offer the lease in evidence.

The lease was objected to as being made in 1878 and having no application to the matter at bar; as being incompetent, irrelevant, and immaterial. The court sustained the objection; to which ruling of the court defendants at the time excepted.

Q. Mrs. Street, you recollect this land which you held under this lease?

A. Yes, sir.

Q. Do you recollect the person named Long—Enos Long—that lived upon a portion of the tract at any time?

A. Yes, sir.

Q. Do you know where he lived in 1874?

A. Yes; he lived on a tract of this land rather beyond James street, I should call it.

Q. On which side of James street?

A. On the west.
Q. On the west side of James street?
A. Yes, sir.
Q. Was it a part of this land that you afterwards leased under this lease of 1878?

The question was objected to by Judge Brumback as being incompetent, irrelevant, and immaterial. The court sustained the objection; to which ruling of the court defendants at the time excepted.

Mr. MASON: We now offer this witness to prove that Enos Long was in possession of this land at the time this attachment service purports to have been made under which the plaintiffs claim title.
Judge BRUMBACK: They can't prove anything of the kind. Let them ask questions and we will make our objections.

Q. Mrs. Street, will you state where Enos Long lived in the spring of 1874?
A. Well, as near as my recollection runs, he lived there in this little house on a portion of this land.
The COURT: What lands?
A. That I leased afterwards.
Q. You say as nearly as you recollect it. Now, do you in fact recollect it?
A. Yes.
Q. Can you say distinctly that you recollect of his living there?
A. Yes; of course, he was living there.
Q. Do you know when Long first came there—whether or not he came in the winter?
A. It was in the spring. I am positive of that.
Q. Early spring?
A. I think it was.
Judge BRUMBACK: Of what year?
A. 1874.
Q. Did he continuously reside there with his family up to the time that you moved on the same tract?
A. No, sir; he moved there shortly afterwards, I should say. He moved away shortly before I did. I got possession of where I bought on the lease. Mr. Alltop was there, and he was there when Altop went on, and then I bought out Altop's possession.
Q. Whose tenant was Alltop?
A. He was Bartlett's and Cobb's.
Q. Do you know whose tenant Long was?
588 Judge BRUMBACK: Tell us of your own knowledge.
A. All I know is what Long said.
Judge BRUMBACK: Then we object.

Mr. MASON: If the court please, it is a part of the *res gesti*. It was long ago, and the admission of that evidence is in the discretion of the court.

The court sustained the objection; to which ruling of the court defendants at the time excepted.

Q. How long did you continue there after you moved on the land under this lease?

Plaintiffs objected to the question as being incompetent, irrelevant, and immaterial. The court sustained the objection; to which ruling of the court defendants at the time excepted.

Q. How long after 1878, when you took possession under this lease, did you continue on that tract of land?

Plaintiffs objected to the question as being incompetent, irrelevant, and immaterial. The court sustained the objection; to which ruling of the court the defendants at the time excepted.

Q. You remained in possession there on that piece of land under your lease up to that time—up to the time McAlpine and myself took possession of that land?

Plaintiff- objected to the question as being incompetent, irrelevant, and immaterial. The court sustained the objection; to which ruling of the court defendants at the time excepted.

Cross-examination.

Questions by Judge BRUMBACK:

Q. That Enos Long house was on James street, was it not?
A. It was nearer to James street than it was to Wood street, of course; it was built rather between the two.
Q. But it was nearer to James street than to Wood street?
A. Yes, sir; it was some nearer.

Gen. BLAIR: If the court please, an objection was made to a part of the testimony of this witness, and an offer was made of certain proof to be made, and questions were asked the witness, and some testimony given which, in our judgement, is incompetent, irrelevant, and immaterial and which ought not to be permitted to encumber the record; we therefore move to strike it out.

The court sustained the motion to strike out the testimony of witness; to which ruling of the court defendants at the time excepted.

Gen. BLAIR: The portion that we move to strike out is all that testimony relating to the possession of the premises from 1874 to 1878.

The court sustained the motion to strike out the testimony; to which ruling of the court the defendant at the time excepted.

Dr. GEO. B. WOOD, a witness called on behalf of the defendants, being first duly sworn, testified as follows, to wit:

Direct examination by Mr. MASON:

Q. What is your occupation?
A. I am a physician.

Q. Where do you reside?
A. I reside in Kansas, in Kansas City, in Wyandotte county.
Q. How long have you resided there?
A. I have resided there since 1857 most of the time.
Q. Did you know David E. James in his lifetime?
A. I did.
Q. Did you know Jos. E. Snyder in his lifetime?
A. I did.
Q. How early did you know David E. James? From what years upward?
589 A. From 1857 until his death.
Q. When did that occur?
A. I don't remember; about 1870, I think.
Q. How early did you become acquainted with Jos. E. Snyder?
A. I think it was in 1857.
Q. Did you know him from that upward until his death?
A. Well, I knew him for several years, until he left.
Q. When did he depart this county?
A. After he went into bankruptcy; somewhere in 1869 or 1870; along there; I cannot say for certain.
Q. Were you one of the owners of certain lands on the plat of what is now known as Kansas City, Kansas?
A. I was.
Q. State how you held these lands subsequent to the year 1860, whether in common or not, and how David E. James held them, if he held them, and if David E. James had an interest in that bottom.
A. He did.
Q. State what these interests were.

Judge BRUMBACK: Do you propose to show a title outside of the record? Is that what you are driving at?

Mr. MASON: We are going to show that Jos. E. Snyder had some interest in that bottom dating from some time about 1860 and that he concealed the interests he held there; that he got them finally located in 1869, and subsequently they were sold in bankruptcy, and we got the title.

Judge BRUMBACK: Didn't you have the Doctor's deposition here?

Mr. MASON: What interest did David E. James have in these lands that we are speaking of?
A. Do you have reference to before the partition suit?
Q. Yes, sir; I want to know the character of his interests there up to the time of the partition suit.

Judge BRUMBACK: We object to this line of evidence. There is one way to prove a title to land, and that is by documents.

The objection was not pressed.

Mr. MASON: Doctor, I will show you a plat which purports to be a certified copy of a plat on file in the office of the register of deeds, in Book Nine, at Kansas City, Kansas. It is, I believe, one in which you joined in executing. Will you please examine it?

A. I recognize that as the ground in question.

Q. Do you see a tract of land on that plat, a rectangular piece of land, in the northerly part of this plat, marked Jos. E. Snyder?

A. I do, sir.

Q. Will you please state, if you have knowledge of the fact, as to why the name of Jos. E. Snyder was put upon that plat and how it came to be there?

A. In order to state what I know I will state from the beginning, and I will commence there.

Q. State in your own way, Doctor.

The COURT: The question asked you, Doctor, is how his name came to be there.

A. By reason of its belonging to Mr. Snyder, I suppose.

Q. Can you state through what source Snyder derived his title to that land?

Plaintiffs objected to the question as being incompetent, irrelevant, and immaterial. The court sustained the objection; to which ruling — the court defendants at the time excepted.

Q. Do you recollect a certain blank deed which Mr. Snyder had at one time? And, if so, go on and state what you know
590 about it—a blank deed in reference to certain interests in Kansas City, Kansas.

Judge BRUMBACK: If your honor please, the Doctor has been already examined and his testimony in the form of a deposition has been read. He has gone over this ground fully, and I don't know whether they deem it necessary to go over it again, but we desire to object to it.

The court overruled the objection, to which plaintiffs at the time excepts.

Mr. MASON: You may state, Doctor.

Judge BRUMBACK: If your honor please, I do not know what the Doctor will say, but this is certainly not competent. He cannot state what Snyder may have said or what James may have said.

The COURT: The question is if he knows. He may state if it is a matter within his own knowledge.

Q. Do you remember the deed, Doctor?

A. Yes, sir; I do.

Q. Go on and state the details and circumstances of that deed.

The COURT: What details and circumstances?

Mr. MASON: State for what purpose it was made.

The COURT: You must state what you know of your own knowledge and not——

The WITNESS: If your honor please, there is but one way that I can state the facts in regard to this matter and my connection with this land, and that will lead directly to this very deed. In 1857 David E. James and myself, with some other parties, became interested in this same land now in controversy, the whole of Kansas

City at that time. Jos. E. Snyder at that time had some means Mr. James at times was short, and Mr. Snyder furnished Mr. James with means from time to time, and then James agreed to give him a certain interest, which at that time was undivided and indefinite; it was in controversy then between certain parties. Subsequently that was defined as being an interest of ten (10) acres and that Mr. Snyder was to have some little properties, some jewelry, watches, or something of the kind, and that he was to convey the ten (10) acres as soon as settlement should be *be* had of this controversy. As nearly as could be understood at that time Mr. James agreed to give Mr. Snyder ten (10) acres about now where the old State Line house stands. The State Line house stands in Missouri, but just about opposite that towards the Kaw river Mr. Snyder was to have ten (10) acres, if James could secure it after settlement of the trouble which had taken place at this settlement. In 1859 that settlement, as I remember it, was made and the land was held in common then until 1867, when partition suit was brought and the land divided; and after this settlement with Armstrong and the other parties in interest Mr. Snyder became uneasy and wanted some tangible interest of some kind to show that he was to have an interest in that property, and Mr. James, I think it was in 1864, gave him this deed alluded to here as a blank deed as to description and in fact as to name.

Judge BRUMBACK: We would like to know if the Doctor is telling what he knows or what he may have heard from James and Snyder in regard to this matter.

A. I speak from my own knowledge, growing out of divers conversations between Snyder and James. I was interested myself.

Q. That is how you learned that?

A. It is what occurred in my presence, not only one time, but twenty (20) times. Mr. Snyder wanted something that would show that he had an interest in the property. There was some irregularities in the habits of James and he wanted something to show that he had an interest in this property.

Gen. BLAIR: It is now known that the source of knowledge from which this witness speaks is derived from conversations be-
591 tween Snyder and James, neither of whom are parties to this suit, and we wish to object to all testimony based upon these conversations, especially as he has already stated that whatever agreement there was between them culminated in a written instrument which is now in evidence here. We object to all this as incompetent.

The court overruled the objection; to which ruling of the court plaintiffs at the time excepts.

Mr. CREE: You have often seen that deed?

A. Yes, sir.

Q. Confine yourself strictly to matters within your personal knowledge.

A. I was endeavoring to do so, and if I am not interrupted I will tell all I know. As I remarked before, in 1867 a partition suit took

place, and, as I remember it, nothing was said in relation to this blank deed. Snyder held it in 1868, and a contract was made with James F. Joy, through his engineer, who was then building the Fort Scott road, as I remember it—Mr. Chanute—to riprap that bank to protect the river bank at the State line by the parties owning the land. This was near a year after the partition suit. I had certain lands allotted to me, James had certain lands allotted to him, and some of the parties in interest made deeds and had them deposited in escrow to secure the riprapping of the bank.

The COURT: To Joy?

A. Yes, sir; and upon the completion of this riprapping or carrying out of this contract the deeds were to be delivered to James F. Joy. I think they were deposited at the First National Bank of Kansas City. This was in 1868, and I heard nothing from Mr. Snyder until late in that year. This contract occurred during the summer, and was, perhaps, completed early in the fall. I would not state definitely the month, for I cannot do so. I do not remember. Mr. James went home to Ann Arbor, Michigan.

Q. Mr. James?

A. Yes, sir; his family resided there. He went home on a visit, and during his absence—he had not been gone very long before Mr. Snyder came to see me over at Wyandotte, and a general talk came up in relation to this property and in relation to this deed; he thought the thing had gone on long enough, and James, it seems, had deeded all that land on the Missouri river that he owned.

Judge BRUMBACK: We object to all this evidence as incompetent.

The court overruled the objection; to which ruling of the court plaintiff- at the time excepted.

The WITNESS: I believe I have stated this before in a deposition.

Mr. Snyder seemed very much offended because this land had been deeded to Joy when he was to have it himself.

Judge BRUMBACK: You don't claim that that is competent?

Mr. MASON: I do, when it is understood in connection with the circumstaces of the case.

Judge BRUMBACK: You cannot take a man's title in that way.

Mr. MASON: It shows this: That he had full notice that the land had been dedicated to another purpose before he attempted to locate it, and therefore would withdraw any power of attorney. Pass on, Doctor, to the action of Snyder; what he did.

A. He filled up this deed on the Missouri river, calling for six (6) acres; this deed that was—and this was in 1868—I think it was the fall of 1868—that he filled it out for these six (6) acres on the Missouri river.

Mr. CREE: What next was done; what other evidence was there between James and Snyder?

A. When this was done James was absent in Michigan.

592 Mr. CREE: When James came home, Doctor, what took place in reference to the transaction between him and Snyder so far as you know? James came home when?

A. James returned early in the spring, I think it was, and there was an arrangement made by which Mr. Snyder should deed this six (6) acres tract to James and James deed to Mr. Snyder.

Q. There was a new arrangement, then?

A. Yes, sir; in the first place, Snyder was to have ten (10) acres. Subsequently the arrangement was that he should have six (6) on the Missouri river instead of over where I have mentioned; but he was to have a blank deed, which he could, in the event of accidents, fill up. He had permission to fill up that deed with the description and name, which he already had done, in the absence of James. On the return of Mr. James from Michigan he was displeased with this action of Snyder for the reason that he had already disposed of the same by deed in escrow at the First National bank.

Mr. CREE: And he got Snyder to deed back to him before he deeded the four other acres?

A. I think it was in the month of April that Mr. James was here. Mr. Snyder and James and myself met several times, and there was considerable feeling on the part of Mr. James because this transaction complicated matters with Joy as well as Snyder. They came to this agreement, that Mr. James should deed to Mr. Snyder four (4) acres; that is the tract that was before mentioned and that is the reason Snyder's name was put on. He was to have four acres instead of six acres. The washing of the river bank and the expense of riprapping, it was calculated, would take two acres, and that would give Snyder four (4) acres clear. That is the substance of it.

Q. Do you recollect any nearer than 1864, the date of this six (6) acre deed?

A. This six-acre deed? That deed, I think, was deposited in 1864; that is my recollection.

Q. We have not the original, Doctor, but we have a copy from the records. Will you look at that copy and see if it is the same?

A. I cannot state as to this deed, but I know it called for six (6) acres on the Missouri river, below the mouth of the Kansas river, and about where I suppose the location in this would be.

The COURT: That is the deed that was filled up?

A. Yes, sir.

Mr. MASON: That is the one I gave you?

The COURT: Was there more than one deed filled up?

A. Not to my knowledge, sir.

Mr. CREE: In reference to this four-acre deed of 1869, was there or was there not any additional consideration paid Mr. James by Snyder for that deed except the exchange?

A. The last arrangement was that Snyder was to take four (4) acres in lieu of the six (6) acres that ran to the river. The reason was that James exacted of Mr. Snyder a proportion or part of this six (6) acres for riprapping. Some had washed away, which he thought Mr. Snyder should lose. The land deeded to Snyder, as I remember it, was principally towards the southwest or towards the

Kansas river from the Missouri river. I think it was between James street and Armstrong street, and I could not now, any more than in a general way, describe the land. I know I could walk over the land, but I could not describe it more minutely.

The COURT: Do I understand you to say that the consideration of the four-acres deed was a reconveying by James to Snyder of the six (6) acres?

A. Yes, sir.

Judge DAY: Now, Doctor, upon this plat there seems to be here marked as though a street or a part of a street, not so wide as James street, between the Jos. E. Snyder tract and the small tract east of James.

593 Q. I will ask you to state whether that is a tract or a street or whether its road extended there from the north end of James street across and east of that Snyder tract up to the Swope tract.

A. There is a street there now.

Q. How long has it been used and in existence there?

A. It has been traveled away back in 1860 somewhere.

Q. And has it continued to be a public highway ever since?

A. Yes, sir. Before that time the road ran along the bank, and from time to time it caved in. Finally the travel was turned in here (indicating on the plat) and my memory is that this was in 1867 or 1868.

Judge DAY: Was it there as a public road in 1871—was it there as early as 1871?

A. I think it was.

Q. And it was at that time and has ever since been used as such?

A. Yes, sir.

Q. As a public road or street?

A. Yes, sir. When that was dedicated there was a street forty (40) feet wide dedicated. Subsequently the county commissioners condemned it and made it eighty (80) feet wide, and it ran along there (indicating on the plat) up here (indicating the demarcation or continuation of James street as drawn by the aforesaid plat).

Q. Does it now extend clear across the Swope land?

A. Yes, sir; it is the main track—the main traveled road across the iron bridge.

Cross-examination.

Judge BRUMBACK:

Q. Doctor, there used to be a ferry across the Kaw river, near the mouth, was there not?

A. Yes, sir.

Q. You were a party in this partition suit of Ewing *vs.* Weir?

A. Yes.

Q. Now, the copy of the plat, does it show where the ferry was or the bridge afterwards, or was there a bridge there at the time of the partition?

A. Well, there has been two or three bridges.

Q. There has been two bridges?

A. Yes, sir. In the first place we ran a ferry there, and subsequently built a pontoon bridge there, which was used at the time of the Price raid. Afterwards that was broken up and we had a wooden bridge. Afterwards the people voted seventy-five thousand dollars ($75,000) in bonds and the present iron bridge was built.

Q. Now, this map shows the bridge here. That is further down the river than the present bridge?

A. We formerly ran the ferry down here (indicating on the plat).

Q. Nearer the mouth of the Kaw?

A. Yes, sir. The pontoon bridge was here, and then afterwards we moved the ferry up here. That is about where the bridge now is. A little below that, only, we operated our ferry. It was in 1869, I think, probably in the winter, that we platted this property in here into lots—that is, those of us lying together, and the Swope tract was left out and also this tract here.

Q. The Snyder tract was left out?

A. We opened up that timber before we laid it off. We cut the timber down and turned travel in that way, so the travel would not interfere with the riprapping, and we opened up the timber before even a street was dedicated, so they could run through here (indicating) and we were hauling rock and piling it up along here, and in the spring, as the bank kept tumbling in, we opened up a
594 street in here (indicating on the plat); think where James street now runs, as per plat. My memory is that that was in the winter of 1868.

Q. The present iron bridge crosses the river. The Kaw is on the extension of James street?

A. Yes, sir.

Q. On the extension?

A. Yes, sir.

Q. The other bridge was further down the river?

A. Yes, sir; it was below that, I know.

Q. Do you remember when the iron bridge was built there? Was it in 1875, '6, '7, or '8?

A. It was not as late as that. It was back ten (10) or twelve (12) years.

Q. It was built in 1875 or 1876?

A. Yes, sir.

Mr. MASON: Was it not built in 1872?

A. I don't think that it has been so long as that.

Q. The history of it is that the crossing of the Kaw river has been moved up stream until it has finally reached the present iron bridge, which is on the extension of James street?

A. Yes, sir; we have from time to time been compelled to move up in order to get a good crossing.

Judge DAY: But that road or street has been kept up, open, and in use since 1868?

A. That is my impression.

Judge BRUMBACK: The plat shows a road here (indicating)?

A. The road ran along here and prior to 1867 and 1868 (indicating on the plat), but in 1868, I think, when they commenced to riprapp the bank along in the spring and it caved in and travel came along here (indicating lines where James street is shown on aforesaid plat), and then in 1869 we dedicated the streets and platted the land and so on and made it Kansas City, Kansas.

Judge DAY: Then in the winter of 1868 the travel was along that extension of James street, was it not, east of the Snyder tract?

A. I think it was; yes, sir.

Q. Was it early as 1868?

A. Yes, sir; I think as early as the spring of 1868, yet I might say 1869. Perhaps it was not until March, 1869.

Mrs. SOPHIA COBB, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination by — ——:

Q. Where do you reside, Mrs. Cobb?

A. I live in Kansas City at present.

Q. How long have you been a resident of that neighborhood?

A. For some time.

Q. Have you been a resident of Wyandotte county?

A. Yes, sir.

Q. Are you the widow of S. A. Cobb, deceased?

A. Yes, sir.

Q. Will you state whether you know of your husband's owning or claiming a piece of land down near the present iron bridge in Kansas City, Kansas, at any time?

A. Yes, sir; he had title to a piece of land there, as I have understood.

Q. What are your earliest recollections of any events connected with that piece of land and how far back does it date?

A. I should say to 1872 or 1873. I know that in 1874 or 1875 we rode across the land, the only time that I ever visited it.

595 Q. About 1874 you rode across this land?

A. Yes, sir.

Q. With whom?

A. With Mr. Cobb.

Q. Do you recollect that Mr. Cobb had anybody living upon the land at that time?

A. He had; yes, sir; and we went there at the time I mention for the purpose of seeing the tenant.

Q. Where did that tenant live, as near as you can designate, on the east or the west side of James street?

A. I think on the west side of James street.

Q. If you had a plat before you could you tell about where it was?

A. I might do so, sir.

Q. Do you know who that tenant was, Mrs. Cobb?

A. I won't say, certain, but I think Mr. Alltop.

Q. There was an Altop on there; do you recollect a man by the name of Enos Long?

A. I don't think I do; I only know Mr. Altop, as he called at the house to see about a fence being put on the ground.

Q. When was this man put there that was on the west side of the street when you and your husband rode around there; about what time?

A. I could not say; my recollection is that we only rode past the house.

Q. What year did you say that was?

A. I should say now it was in the spring of 1874; I am sure it was in 1874 or 1875.

Q. Do you recollect where the packing-house used to stand—the old site of the packing-house there?

A. Yes, sir.

Q. In reference to that old packing-house site, what direction was this house that this man lived in that your husband had upon this land in 1874?

A. I should say west and a little north; almost due west.

Q. Would it be on the right-hand side of James street or the left-hand side?

A. What is that?

Q. Would it be on the right-hand side of James street or the left-hand side of James street as you would go over from Wyandotte to Kansas City?

A. On the right-hand side.

Q. Mrs. Cobb, do you know somewhere near the westerly boundary of that land extended, that land that your husband claimed?

A. It was very near the Kaw river.

Q. Do you remember of going around at any time to see a stake or monument on the western boundary of the land?

A. I remember of his speaking of a stake there as we passed by as being the line of the ground; I could not say whether it was the south or west.

Q. In your former testimony do you remember testifying that you drove around that stake on the southwest corner of that tract?

A. Yes, sir.

Q. Well, state, in reference to Armstrong street, where that stake was.

A. I did not recognize Armstrong street at the time.

Q. But you recognize that there are three streets there in Kansas City, and you can observe the plat here. (Counsel here shows plat to witness.) Here is Armstrong street. Now, in reference to that piece of land, where was the western boundary of that tract
596 of land, if you can remember now, from driving around that stake?

A. I could not say now, but I know that it was near to Armstrong street. Of course Armstrong street was not laid out at that time.

Q. It was laid out to there (indicating).

A. Of course I could not determine the distance to there.

Q. Mrs. Cobb, will you state who are the heirs of S. A. Cobb, de-

ceased, and who were at the time McAlpine purchased the interest in this tract?

A. Myself, Albert H., Stephen, and Dollie, the little girl.

Q. What was her name?

A. Mary.

Q. Those are all the heirs?

A. Yes, sir.

Q. At the time you made a certain guardian's deed which has been introduced in this proceeding this child Stephen and the little girl—was the little girl dead at that time?

A. No, sir.

Q. In what year did Mr. Cobb die?

A. It was in 1878.

Q. One of the children is dead?

A. Yes, sir.

Q. And the little girl, when did it die?

A. Four (4) years ago this summer.

Q. Then I understand that Stephen is not dead?

A. No, sir.

Q. The sole surviving children are Albert H. and Stephen?

A. Yes, sir.

Judge BRUMBACK (addressing the question to Dr. Wood, the last witness upon the stand, by permission of the court): Doctor, when did David E. James die?

A. I cannot say certainly, but I think it was along about 1870 or 1871; I am not positive.

The examination of Mrs. COBB was continued:

Mr. CREE: State to the court whether or not you recollect of your husband building a house on this land of which you have spoken before the time you made this visit you have mentioned.

A. Yes, sir. A house was there at the time we visited the tract, and I remember of a man coming to see my husband and talking with him about the house.

Q. He had the house built?

A. Yes, sir.

Cross-examination.

Questions by Judge BRUMBACK:

Q. That house was on James street?

A. I should say that it was not. I should say it was between Wood and Armstrong streets—near that.

Q. What year was it?

A. At the time we visited there?

Q. No; at the time the house was built. Do you remember the year?

A. I think it was in the fall of 1874. Perhaps it was in '73.

Col. WM. M. TWEEDDALE here resumed the stand and was examined by Judge BRUMBACK:

Q. Have you calculated the angle that a line thirty-six hundred and four and one-half (3,604½) feet drawn from the southeast corner of section eleven (11) to the northwestwardly line of James street would make with the north and south line?

A. That would not be correct, Judge.

Q. Then I will put it differently. Have you made the
597 calculations you were requested by me to make before the adjournment for dinner as to the angles and lengths of lines?

A. Yes, sir; a line drawn from the initial point to the east line of James street would form an angle with the lines of the call of five degrees eleven (11) minutes and sixty-four (64) seconds. The distance additional to get up to the same point would be fourteen and eighty-nine one-hundredths (14.89) feet. The line from center of James, the angle would be five (5) minutes and forty-nine (49) seconds; the additional distance would be eighteen and seventy-three hundredths (18.73) feet. A line drawn to the west line of the west side of James street, the angle would be six (6) degrees twenty-five (25) minutes. The additional distance would be twenty-three and one-hundredths (23.01) feet.

Q. The length of the lines up to the tangent with the arc would be what?

A. The original distance was thirty-six hundred and four and one-half (3,604½) feet; the distance to the east line of James street is thirty-six hundred and nineteen and thirty-nine hundredths (3,619.39). The distance to the center of James street is thirty-six hundred and twenty-three and twenty-three hundredths (3,623.23) feet; the distance to the west line of James street, thirty-six hundred and twenty-seven (3,627).

Q. These distances are distances between the initial point and the base line at the southerly side of the Thomas H. Swope tract, marked on the plat?

A. Yes, sir.

Q. And the angles you have given are to be added to the twenty-eight and a half (28½) degrees to give the angles of the north and south lines?

A. Yes, sir.

Judge DAY: Mr. Tweeddale, upon the theory or assumption of starting at the initial point and running to this point at an angle twenty-eight and a half (28½) degrees west to the northwestwardly line of James street, you said in your former testimony would take you to the west line of James street, did you not?

A. From east to west.

Q. You said in your former testimony this forenoon that beginning at a point north twenty-eight and a half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11) south, of range twenty-five (25) east, of the sixth (6th) principal meridian, on the northwestwardly line of James street extended, as shown by

the plat of Kansas City, Kansas, would take you to the west line of James street?

A. Yes; I would have to go to that point. I would not write it that way if I were writing it, though.

Q. Suppose the description read thus: Beginning at a point north twenty-eight and one-half (28½) degrees west, distant thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11) south, of range twenty-five (25) east, of the sixth principal meridian, in the city of Kansas, on the northwardly line of James street extended, as shown by the plat here exhibited. Where would that take you to, in reference to James street, as shown upon this plat?

A. Neither of them are clearly expressed. It would carry you to the east side, which is the most northerly.

Mr. MASON: I desire, for the purpose of saving the point, to again press to the attention of the court a certain deposition taken
598 in the cause of McAlpine *vs.* Tourtelott in the circuit court of the United States, before alluded to, of one Peters, and I would say that it goes to the same point and to the same facts and the matter of the concealment by Snyder of his real-estate interest from his creditors in the bankrupt courts and to certain admissions made by Mr. Snyder to Mr. Peters, C. F. Peters, the deponent, and I wish to offer this testimony in connection with the testimony of Dr. Wood's as corroborative of the testimony of the Dostor and as going to the same point; I would like to have the court rule upon it.

The deposition was objected to by plaintiffs as being incompetent, irrelevant, and immaterial. The court sustained the objection; to which ruling of the court the defendants at the time excepted.

Dr. WOOD was here recalled.

Examined by Mr. CREE:

Q. Do you know the names of the children of David E. James, Doctor?

A. Yes, sir.

Q. Will you please state their names?

A. Lewellen James, known as L. E. James; Virginia James, Jennie James, Ann James, Sullivan James. Mrs. James was named Jennie M. James.

J. B. LARIMER, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Questions by Mr. MASON:

Q. What is your profession?

A. I am civil engineer. I am now an attorney-at-law.

Q. You are a civil engineer and know about surveying lands?

A. Yes.

Q. I will present you with a plat of what is known as Kansas City, Kansas, duly certified, the one heretofore used in this case.

Now, assuming that all these streets—James street, Wood street, and Armstrong street—run north twenty-eight and one-half (28½) degrees west, and that all these lines which you see, such as the line on the lower side of tract marked Thomas H. Swope here, and all these other lines run south sixty-one and one-half (61½) degrees west, at right angles to these streets, and assuming this other fact that the distance from a certain quarter (¼) section corner which is located down here by a little triangular tract or block of land south, about six (6) inches below the place where the line on the right-hand side, which is marked State line, strikes the Missouri river and in a southerly direction from this C. B. Wood tract, somewhere about where I now designate, where I have my finger (indicating sec. corner of section eleven (11), township eleven (11), range twenty-five (25), marked on plat)—that the distance from that point to this line, which bounds the southerly side of the piece of land marked T. H. Swope, is thirty-six hundred and four and one-half (3,604½) feet, and this section corner is something over a block east-ly of James street.

Now, then, with this fact assumed, I will ask you, if you please, to locate a piece of land by the description in a certain bankrupt deed which I hold in my hand and which is dated the 20th day of October, 1871—the same bankrupt deed which has been introduced in evidence in this suit. Now, the description in this deed is as follows:

Beginning at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11) south, of range twenty-five (25) east, of the sixth (6th) principal meridian.

Now, I have assumed this corner to be here (indicating section corner) and the distance in the direction of these streets due north twenty-eight and one-half (28½) degrees west. Now, the call was, Beginning at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet *feet* from the southeast corner of section eleven (11), township eleven (11) south, of range twenty-five (25) east, of the 6th principal meridian.

599

Now, where is the point you have reached?

WITNESS (indicating): It would be there, on southeast side of T. H. Swope tract (indicating point where line of T. H. Swope strikes Missouri river parallel with James street).

Q. You would reach a line which borders on the T. H. Swope tract—the southerly side, east of James street?

A. Yes, sir.

Q. Now, the next thing in the deed is as follows: On the northwestwardly line of James street extended, as shown by the plat of Kansas City, Kansas, on file in the register of deeds' office in the county of Wyandotte, on page 9 of the Book of Plats filed on the 3rd day of May, A. D. 1869. Now, supposing that is the plat, where will you go, with that last call before you: Beginning at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and

four and one-half (3,604½) — from the southeast corner of section eleven (11), township eleven (11) south, of range twenty-five (25) east, of the 6th principal meridian, on the northwestwardly line of James street extended. Now, where will you go?

A. This line is James street (indicating line of James street).

Q. Assuming that to be James street—the one marked James street on the plat.

A. I should go from this corner to that variation (indicating on the plat the point where line of James street intersects southerly line of Thomas H. Swope tract, being northerly line of D. E. James' tract and northerly line of tract marked on plat Jos. E. Snyder).

Q. East of James street?

A. Yes, sir. If I understand the description of the deed I should be when I reached this point on James street, and I should go to James street.

Q. On what line would you go to James street?

A. I should go on that line I should strike when I reached the point described in the deed.

Q. From the initial point east to James street?

A. Yes, sir.

Q. Do you mean that you would go from the initial point to James street?

A. I should go from the section corner, as I understand it, to the line between the T. H. Swope tract and this tract marked Jas. E. Snyder, and if I should find that I was east of James street I should go to James street on the line between Swope and Snyder. I would follow that across (indicating the line between Thomas H. Swope and D. E. James allotments).

Q. Supposing it said "northwestwardly line of James street," to what point on the northwestwardly line of James street would you go? Take your pencil and point out the exact route.

A. Read the deed through—the whole description.

Q. Beginning at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11) south, of range twenty-five (25) east, 6 P. M., on the northwestwardly line of James street extended.

A. If I understand, then, I should be on one line or the other of James street. This is the northerly line (indicating the easterly line).

600 Q. Yes, sir. Now, supposing it read in the record northerly line and in the bankrupt deed it was northwardly.

A. As I understand this line it is James street extended.

Q. Supposing the deed read northwardly line.

A. I should go to the most northerly line, which is the easterly line.

Q. Now, the call is thus: Thence south sixty-one and one-half (61½) degrees west six hundred and forty and two-twelfths ($640\frac{2}{12}$) feet. Now, take the call thence south 61½ degrees west $640\frac{2}{12}$ feet, where would you go?

A. Right angles to this line.

Q. Which line?

A. James-street line.

Q. Somewhere near the extension of the James-street line?

A. Somewhere out in here (indicating line between Swope and D. E. James allotments). This scale is 200 feet to the inch.

Q. Now, the next call is thence south twenty-eight and one-half ($28\frac{1}{2}$) degrees east three hundred (300) feet. Now, this is three hundred (300) feet for this Snyder tract; it is three hundred (300) feet wide. Where would you go?

A. South three hundred (300) feet on that variation parallel with the east line of James street.

Q. Thence north sixty-one and one-half ($61\frac{1}{2}$) degrees east six hundred and forty and two-twelfths ($640\frac{2}{12}$) —. Where would that take you?

A. It would take me back again.

Q. Where?

A. It would take me back parallel with the north line of this Snyder tract, to a point somewhere on the east line of James street.

Q. Thence north twenty-eight and one-half ($28\frac{1}{2}$) degrees west on said northwestwardly line of James street three hundred (300) feet to the beginning.

A. It would take me back on the east line of James street to the point from which I started.

Q. Containing four (4) acres, more or less; also beginning at the same point as last above and thence north sixty-one and one-half ($61\frac{1}{2}$) degrees east to the Missouri river. Where does that take you?

A. To the river bank on the same line.

Q. At a point where the southern line of the Swope tract intersects the angle of the Missouri river?

A. Yes, sir.

Q. Thence along said river south twenty-eight and one-half ($28\frac{1}{2}$) degrees east three hundred (300) feet. Where does that reach?

A. Along said river.

Q. This would coincide with the southern line of the Jos. E. Snyder tract?

A. I should follow that variation and I should be on the line parallel with the east line of James street, disregarding the river.

Q. Thence south sixty-one and one-half ($61\frac{1}{2}$) degrees west two hundred and thirty-one (231) feet to the northwardly line of James street extended.

A. What was the first distance?

Q. It was not given; it was to James street, thence north twenty-eight and one-half ($28\frac{1}{2}$) degrees west three hundred (300) feet to beginning. Where would that take you?

A. To the east line of James street.

Q. Along one of the lines of James street to the beginning?

A. Yes.

Q. Containing two acres, more or less.

Q. Now, let me ask you this question, whether you notice this tract marked Jos. E. Snyder on the plat.

601 A. Yes, sir.

Q. You see that it is a rectangle and parallelogram?
A. Yes.
Q. Now, will that tract of land marked Jos. E. Snyder, bounded on the east by one of the lines of James street, on the west by the line near Armstrong street extended, on the north by the south line of the T. H. Swope tract, and on the south by a line southerly therefrom and by an alley; will that tract be wholly within the boundaries of the bankrupt deed?
A. I think so.
Q. It is wide enough to take it in?
A. Yes, sir.
Q. This Snyder tract would then be included in the description of the bankrupt deed?
A. Yes, sir.
Q. Which part; first or last?
A. The first part.

Mr. CREE: If the court please, there is a little matter which I desire to call your attention to now. Your honor will recollect that on yesterday morning there were two transcripts of the district court of Wyandotte county introduced in evidence in the case of Henry R. Seegar against Snyder, and C. F. Welland against Joseph E. Snyder; they were offered in evidence just before noon and I did not at that time run through them, as they were quite lengthy; I did not run through them to see that each document copied in there was properly a part of the record or properly copied or anything of that kind, but after the adjournment at noon I went through them and I find one document there which should not properly be there. I had thought that I would not call the attention of the court to it, as it would not be held to be properly a part of the record, but it occurrs to me that it may be insisted on by the other side that it is a part of the record and should be so considered.

I allude to the affidavit of Wm. H. Ryus read on motion to amend returns of the sheriff in December, 1882. Now, this affidavit is really no more a part of this record than the fifty (50) other affidavits, if there were that many, read in that case, and I take it that by some mistake the clerk, finding the affidavit with the papers, copied it in. Does the other side insist that it should remain in there?

Judge BRUMBACK: "Yes, sir; for whatever the record is competent for."

Mr. CREE: I move to strike it out. It is evidently in there through some inadvertence of the clerk.

Judge BRUMBACK: We object.

The court reserved its ruling.

Defendants next offered in evidence the original lease by A. B. Bartlett and S. A. Cobb, dated June 18th, 1877, to one George Altop, for the premises of which this land in controversy forms a part.

Plaintiff objected to the introduction of this evidence as incompetent, irrelevant, and immaterial.

The court sustained the objection; to which ruling of the court the defendants at the time excepted.

Said lease is in words and figures as follows, to wit:

602 Know all men by these presents that until further notice George Altop is given permission to occupy a residence and necessary out-building — the tract of land in Kansas City, Kansas, Wyandotte county, as and by the undersigned, bounded on the east by James street and its extension, on the west by Armstrong street as it would be if opened and extended on its present line, on the north by the land of T. H. Swope, and on the south by an alley of said Kansas City, Kansas, eighteen (18) feet wide, being the same land conveyed to them by Byron Judd and others. The said Altop is to occupy said premises as tenant at will of the undersigned.

(Signed) A. B. BARTLETT,
By E. L. BARTLETT,
His Agent and Attorney-in-Fact.
S. A. COBB.
GEORGE ALTOP.

Dated June 18th, A. D. 1877.

Defendants here rested their case.

603 Plaintiffs here offered testimony in rebuttal as follows:

Judge BRUMBACK: "We now offer duly certified copies from the tax-sales books and other records that bear on the validity of the tax titles.

These copies from the tax-sales books and tax-roll are documents pertaining to the tax title."

The defendants objected to each of the papers as incompetent, irrelevant, and immaterial. The court overruled the objection; to which ruling of the court the defendants at the time duly excepted.

Said documents are in words and figures following, to wit:

In the Circuit Court of the United States for the District of Kansas.

NICHOLAS MCALPINE, JAMES M. MASON, SOPHIA A. COBB, Complainants, *vs.* GEORGE W. TOURTELOTT, GEORGE P. ALLCUTT, LAFAYETTE TRABER, C. F. WELLAND, and Others, Defendants.	In Equity.

The complainants and said four above-named defendants agree that copy of tax-sales certificates No. 11 and copy from Wyandotte Gazette of notice of tax sale, with certificates thereto by Wm. E. Connelly, county clerk, dated March 31st, 1885, all hereto attached, may be read in evidence, so far as competent, without further authentication; also that the only notice published in a newspaper of sale of the land mentioned in the certificate for the delinquent taxes for 1869 is that set out in the copy from said newspaper. It is also stipulated by the complainants herein that prior to May—that is to say, prior to the first Tuesday in May, 1869—there was no publica-

tion of notice for the tax sale for the land described in tax-sale certificate No. 359, a certified copy of which is hereto attached, certified by Wm. E. Connelly, county clerk, March 31st, 1885, and that such certified copy may be read in evidence, so far as competent, without further authentication.

Wyandotte, April 1st, 1885.

JAMES M. MASON,
Attorney for Complainants.
PRATT, BRUMBACK AND FERREY,
Attorneys for Tourtelott and Allcutt.

604 The Wyandotte Gazette is published every Thursday morning, at Wyandotte, Kansas, by F. A. Kessler.

Terms $2.00 per year, in advance.

Wyandotte Gazette.

Vol. XI, No. 30.

WYANDOTTE, KANSAS, WEDNESDAY, *April 27th*, 1870.

Whole number, 550.

Wyandotte County Delinquent Tax-List for A. D. 1869.

Land in Wyandotte county.	J. E. Snyder, com. N. W. corner of tract conveyed to J. F. Joy by D. E. James, S. 28° and 10′ east 300 ft., S. 62° 10′ west 580 ft., N. 28° 10′ E. 580 ft. to beg., 4 ac.
* * *	
Delaware twp.	
* * *	
Land in Quindaro township.	Notice is hereby given that so much of each tract of land or town lot described in the foregoing list as may be necessary for that purpose will, on the first Tuesday (3d) of May, A. D. 1870, and the next succeeding days, be sold at public auction by the treasurer of Wyandotte county, at his office, in Wyandotte City, for the taxes and charges due thereon.
* * *	
Shawnee twp.	
* * *	

N. McALPINE,
Treasurer of Wyandotte Co.

Wyandotte City, April 8th, 1870.

STATE OF KANSAS, }
County of Wyandotte. }

I, William E. Connelly, county clerk of said county, hereby certify that the foregoing is correctly taken from and is a true copy of a part of an original newspaper, "Wyandotte Gazette," and the original number of copy in my office among papers pertaining to the tax sales, of which original number I, as such county clerk, am the keeper.

Witness my hand and official seal of office, being the seal of said county, at my office, in the city of Wyandotte, in said county, this 31st day of March, A. D. 1885.

WM. E. CONNELLY,
County Clerk. [SEAL.]

Fee for copying certificate, .50.

605 $33.69. Face.

STATE OF KANSAS, }
County of Wyandotte. }

COUNTY TREASURER'S OFFICE,
WYANDOTTE CITY, *May 4th*, 1870.

This is to certify that I did, at public auction, pursuant to notice given as required by law, on the 4th day of May, A. D. 1870, sell to C. I. Richards the following-described real estate situated in Wyandotte county, to wit: Commencing at N. W. corner of tract conveyed to J. F. Joy by D. E. James, S. 28° 10′ E. 300 feet, S. 62° 10′ W. 580 ft., N. 28° 10′ W. 300 ft., N. 62° 10′ E. 580 feet to beg., 4 acres—

For the sum of thirty-three and $\frac{69}{100}$ dollars, said sum being the amount of taxes and penalty due and unpaid levied on said real estate for the year A. D. 1869, with charges thereon, and the said C. I. Richards, his heirs or assignees, will be entitled to a deed of conveyance of said real estate on and after the 4th day of May, A. D. 1873, unless the said taxes, interest, and charges shall have been previously paid and discharged according to law.

N. McALPINE,
Treasurer of Wyandotte Co., Kansas.

Back of certificate.

36 dollars paid taxes for 1870 on the within Jan'y 1st, 1871. $36.00. J. C. Welsh, Co. treas. $118.20 paid taxes for 1871 on the within Jan'y 10th, 1872. $118.20. J. C. Welsh, Co. treas.

Back.

Taxes for 1872, paid by owner. No. 101. Taxes-sale certificate, 1869. C. I. Richards, purchaser. Filed Oct. 18th, 1875. A. B. Hovey, county clerk, Wyandotte county, Kansas. Two acres, part of the within-described tract of land, redeemed by H. & St. Joe R.

R. Feb'y 8th, 1873. Redemption money, $163.50, remitted to J. C. Douglass by draft, April 18th, 1873, for C. I. Richards. M. McAlpine, county treasurer.

STATE OF KANSAS, }
County of Wyandotte, } ss:

I, William E. Connelly, county clerk of said county, hereby certify that the foregoing is a true and correct copy of certificate of tax sale No. 101, dated May 4th, 1870, and of all endorsements and entries therein, which certificate is a paper filed in my said office and of which I, said county clerk, am the keeper.

Witness my hand and official seal and seal of office, being the seal of said county, at my office, in the city of Wyandotte in said county, this 31st day of March, A. D. 1885.

WILLIAM E. CONNELLY,
County Clerk. [SEAL.]

606 Face.

County treasurer fee, .25; Co. clerk fee, .50—48.25.

No. 359.

STATE OF KANSAS, }
Csiy and County of Wyandotte. }

COUNTY TREASURER'S OFFICE, *April 30th*, 1870.

This is to certify that at the sale of real estate in said county for the delinquent taxes for the year 1868 on the 28th day of June, 1869, the following-described, viz., (5) five acres out of the following-described tract, viz: Beg. N. 28½° W. 2,517¾ ft. from S. E. cor. of sec. 11, T. 11, R. 25, th. S. 61½° W. 1,417 ft. to the E. bank of Kaw river, down same N. 42 & ¾° W. 282 ft., N. 26 & ¾° W. 600 ft., N. 9 & ¾° W. 109 ft., N. 13½° E. 86 ft., N. 31¼° E. 91 ft., N. 61½° E. 152 ft. to bank Mo. river, down the same S. 27¾° E. 393½ ft., S. 43½° E. 435 ft., S. 46¼° W. 287 ft., S. 61½° W. 425½ ft. to beg., cont'g 38 acres—5 acres—

Said land assessed in name of and as belonging to Jos. E. Snyder, was bid off by the county treasurer thereof for said county of Wyandotte for the sum of $39.85, the amount of taxes and charges thereon for said year.

No person at said sale having offered to pay the taxes, penalty, and charges against said property, and J. C. Douglass having this day paid to the county treasurer the sum of $48.85 (equal to the amount of redemption), the said J. C. Douglass, his heirs and assigns, will be entitled to a deed of conveyance of said real estate on and after the 28th day of June, 1872, unless the said taxes, interest, and charges shall have been previously paid and discharged according to law.

N. McALPINE,
Co. Treas., Wyandotte Co., Kas.

For back of certificate see over.

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On back of certificate there is following:

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, P. J. Kelley, county clerk of Wyandotte county, Kansas, by virtue of the authority in me vested by law and in consideration of the sum of $48.25 paid by J. C. Douglass to N. McAlpine, treasurer of said county, on the 30th day of April, 1870, do hereby assign unto the said J. C. Douglass all the interest of said county in and to the said real estate described in the within certificate—

Obtained under and by virtue of the tax sale therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in Wyandotte City, this 30th day of April, A. D. 1870.

PATRICK J. KELLEY,
County Clerk. [SEAL.]

Back.

Taxes for 1872 paid by owner. No. 359. Tax certificate, 1868. J. C. Douglass, assignee. Filed October 18th, 1875. A. B. Hovey, county clerk.

Endorsed across back: Two acres out of the within tract redeemed Feb'y 8th, 1873, by H. & S. J. R. R. Co. $43.50 redemption money remitted by draft April 18th, 1873. N. McAlpine, Co. treas. 2 acres off of the easterly end, fronting on the Missouri river; Snyder tract.

607 STATE OF KANSAS, } ss:
County of Wyandotte, }

I, William E. Connelly, county clerk of said county, hereby certify that the foregoing is a true and correct copy of certificate of tax sale No. 359, dated April 30th, 1870, and of all endorsements and entries therein; which certificate is a paper filed in my said office and of which I, as such county clerk, am the keeper.

Witness my hand and official seal and seal of office, being the seal of said county, at my office, in the city of Wyandotte, in said county, this 31st day of March, A. D. 1885.

WILLIAM E. CONNELLY,
County Clerk. [SEAL.]

Fees for copying certificate, $1.00.

Endorsed: No. 4668. Copies of tax-sales certificates and of one notice in newspaper, filed by Tourtelott in McAlpine *et al. vs.* Tourtelott *et al.* Filed June 1st, 1885. A. S. Thomas, clerk.

(Here follow tables marked pp. 608, 609, 610, and 611.)

612 STATE OF KANSAS, } ss:
County of Wyandotte, }

I, William E. Connelly, county clerk of said county, hereby certify that the foregoing is a true and correct copy from page 81 of the Duplicate Book of Tax Sales of said county, in my office and in my custody and keeping as such county clerk, such book being the record required by law to be made and kept in said office.

Witness my hand and official seal of office, being the seal of said county, at my office, in the city of Wyandotte, in said county, this 31st day of March, A. D. 1885.

WILLIAM E. CONNELLY,
County Clerk. [SEAL.]

STATE OF KANSAS, } ss:
County of Wyandotte, }

—, W. R. Wagstaff, judge of the 10th judicial district of said State and president judge of the district court of said county, do hereby certify that William E. Connelly, by whom the above attestation was made, was at the date thereof county clerk of said county, duly qualified, and that the same is in due form of law and made by the proper office. Dated May 23rd, A. D. 1885.

W. R. WAGSTAFF,
District Judge.

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, L. C. Trickey, clerk of the district court in and for said county, do hereby certify that the Hon. W. R. Wagstaff, whose genuine signature is subscribed to the foregoing certificate, was at the date thereof president judge of said court, duly commissioned, sworn, and acting.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at this the city of Wyandotte, this the 23rd day of May, A. D. 1885.

L. C. TRICKEY, *Clerk.* [SEAL.]

(Endorsed:) No. 4668. Copies of tax sales books filed by Tourtelott in McAlpine *et al. vs.* Tourtelott *et al.* Filed June 1, 1885. A. S. Thomas, clerk.

Plaintiffs next offered in evidence duly certified copy of the deed from Cobb and Bartlett and their wives to the Hannibal and St. Joe Railroad Company, dated the 15th day of August, 1872, for the land between James street and the Missouri river covered by the bankrupt deed.

Defendants objected to the instrument as incompetent, irrelevant, and immaterial; the court overruled the objection; to which ruling of the court the defendants at the time excepted.

Said deed is in words and figures following, to wit:

613 [U. S. revenue stamp.]

This indenture made this fifteenth day of August, in the year of our Lord, one thousand eight hundred and seventy-two, between Stephen A. Cobb and Sophia A. Cobb, his wife, and Allison J. Bartlett and Sarah E. Bartlett, his wife, all of Wyandotte county, Kansas, of the first part and the Hannibal and St. Joseph Railroad Company of the second part, witnesseth:

That the said parties of the first part in consideration of the sum of eight hundred and fifty dollars ($850.00) to them paid, have sold, and by these presents do grant, bargain, sell and convey to the said party of the second part, and its assigns, all the following-described lands and tenements situated in the county of Wyandotte and State of Kansas, and described as follows, to wit:

Beginning at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11), south range twenty-five (25) east of the sixth principal meridian in Kansas on the northerly line of James street extended, as shown by the plat of Kansas City, Kansas, on file in the office of the register of deeds for said county, and recorded on page 9, of the Book of Plats, filed and recorded on the 3rd day of May, 1869, by D. E. James and others, thence north sixty-one and one-half (61½) degrees east to the Missouri river, thence down along said river south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the northerly line of James street aforesaid extended. Thence north twenty-eight and one-half (28½) degrees west along said line of said James street extended three hundred (300) feet, to the beginning, containing two (2) acres more or less.

With the appurtenances and all the estate, title and interest of the said parties of the first part therein, and the said grantors do hereby covenant and agree that at the delivery hereof they are the lawful owners of the premises above granted and seized of a good and indefeasible estate of inheritance therein, free and clear of all incumbrances and that they will warrant and defend the same in the quiet and peaceable possession of said party of the second part and its assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands the day and year above written.

STEPHEN A. COBB.
SOPHIA A. COBB.
A. B. BARTLETT.
SARAH E. BARTLETT.

Executed and delivered in presence of—

——— ———.

STATE OF KANSAS, } ss:
County of Wyandotte, }

On this 15th day of August, A. D. 1872, before me, a notary public in and for said county, came Stephen A. Cobb and Sophia A. Cobb, his wife, and Allison B. Bartlett and Sarah E. Bartlett, his wife, to me personally known to be the same persons who executed the foregoing instrument, and duly acknowledged the execution of the same.

In testimony whereof I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

H. L. ALDEN,
Notary Public. [SEAL.]

Recorded September 19th, A. D. 1872, at 3 p. m.

——— ———,
Register of Deeds.

614 STATE OF KANSAS, } ss:
County of Wyandotte, }

I, the undersigned, the register of deeds in and for said county, do hereby certify that the above and foregoing is a true and correct copy of a warranty deed, with the certificate of acknowledgement attached thereto and date of filing endorsed thereon, as the same appears of record in the said office of register of deeds in said Wyandotte county, and is duly recorded in Book "S" of said records, on page 11.

Witness my hand and official seal this 21st day of March, A. D. 1881.

J. S. CLARK,
Register of Deeds. [SEAL.]

Plaintiffs next offered in evidence duly certified copy of the release that was spoken of by Seegar in his deposition, which it was agreed in the deposition by stipulation might be read.

Defendants objected to the introduction of this evidence as incompetent, irrelevant, and immaterial; which objection was by the court overruled, and to which ruling of the court the defendants at the time duly excepted.

Said release is in words and figures as follows, to wit:

STATE OF MISSOURI, } ss:
Jackson County, }

In consideration of one dollar to me in hand paid and the absolute fulfillment of the within bond of conveyance of six (6) acres of land to Joseph E. Snyder by deed dated July 27th, 1864, and recorded on the 23rd October, 1868, in Liber L of Deeds, on page 135 and 136, in the office of the register of deeds in and for the county of Wyandotte, State of Kansas, this bond, recorded in said office in

"Record" A, p. 462, is hereby cancelled and discharged and absolutely fulfilled.

Kansas City, Missouri, April 28th, 1869.

HENRY R. SEEGAR.

Witnessed by—
JOSEPH E. SNYDER AND
R. SACHS.

Recorded July 1st, A. D. 1869, at 9 o'clock a. m.

JAMES A. CRUISE,
Register of Deeds.

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, the undersigned, the register of deeds in and for said county, do hereby certify that the above and foregoing is a true and correct copy of a satisfaction of bond for deed, with the date of filing endorsed thereon, as the same appears of record in the said office of the register of deeds in and for said Wyandotte county, and is duly recorded in Book M, on page 207.

Witness my hand and official seal this 21st day of March, A. D. 1881.

J. S. CLARK,
Register of Deeds. [SEAL.]

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, W. R. Wagstaff, judge of the tenth judicial district of the State of Kansas and president judge of the district court of said county, do hereby certify that J. S. Clark, by whom the above attestation was made, was at the date thereof register of deeds of said county, duly qualified, and that the same is in due form of law and made by the proper officer.

Dated May 28th, A. D. 1885.

W. R. WAGSTAFF,
District Judge.

STATE OF KANSAS, } ss:
County of Wyandotte, }

I, L. C. Trickey, clerk of the district court in and for said county, do hereby certify that Hon. W. R. Wagstaff, whose genuine signature is subscribed to the foregoing certificate, was at the
615 date thereof president judge of said court, duly commissioned, sworn, and acting.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at the city of Wyandotte, this the 28th day of May, A. D. 1885.

L. C. TRICKEY, *Clerk.* [SEAL.]

Endorsed: No. 4668. Deed from Cobb and Bartlett to H. & St. J. R. R. Co. and certified copy of satisfaction of bond from Henry R. Seegar. Filed by Tourtelott parties in McAlpine *et al. vs.* Tourtelott *et al.* Filed June 1st, 1885. A. S. Thomas, clerk.

Plaintiff- next offered, in addition to the bankrupt record, duly certified copy of record of judgement of Jaccard and Company assigned to Norman and by Norman to Harrison.

The defendants objected because incompetent, irrelevant, and immaterial.

Which objection was by the court overruled; to which ruling of the court the defendants at the time duly excepted.

Said document is in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
Western District of Missouri.

In the United States District Court for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt. No. 136.

In bankruptcy.

Assignment of Bankrupt Effects.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

Know all men by these presents that Samuel A. Vose, of the city of Jefferson, within the county of Cole and State of Missouri, in said district, has been duly appointed assignee in said matter.

Now, therefore, I, James H. Beatty, register in bankruptcy, by virtue of the authority vested in me by the 14th section of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United Stated," approved March 2nd, 1867, do hereby convey and assign to the said Samuel A. Vose, assignee aforesaid, all the estate, real and personal, of the said Joseph E. Snyder, bankrupt aforesaid, including all the property, of whatever kind, of which he is possessed or in which he was interested or entitled to have on the 2nd day of December, 1867, with all his deeds, books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said 14th section of said act; to have and to hold all the foregoing premises to the said Samuel A. Vose and his heirs forever, in trust, nevertheless, for the use and purposes, with the powers, and subject to the conditions and limitations set forth in said act.

In witness whereof I, the said James H. Beatty, have hereunto set my hand this 2nd day of March, A. D. 1868.

JAMES H. BEATTY,
Register in Bankruptcy.

Order of Court of February 11th, 1871.

Samuel A. Vose, assignee herein, files his resignation as such assignee. It is hereby ordered that the resignation of Samuel A. Vose as assignee herein be, and the same is hereby, accepted, and that Henry N. Ess, of Kansas City, Missouri, be, and he is hereby, appointed assignee of said bankruptcy vice late Samuel A. Vose, resigned as aforesaid.

It is further ordered that the said Henry N. Ess execute and file a bond in the sum of one thousand dollars ($1,000), conditioned for the faithful discharge of his duty as such assignee.

And it is further ordered that said Samuel A. Vose, the
616 former assignee herein, convey to the assignee, Henry N. Ess, all the estate and effects of the said aforesaid bankrupt according to law.

Proof of Debt by Jno. P. Harrison.

In the District Court of the United States for the Western District of Missouri.

In the Matter of JOSEPH E. SNYDER, Bankrupt.

In bankruptcy.

WESTERN DISTRICT OF MISSOURI, *ss:*

At Kansas City, Missouri, on the 14th day of February, 1871, before me, J. C. Karnes, United States commissioner, district of Missouri, came John P. Harrison, of Kansas City, Missouri, and makes oath and says—

That the said Joseph E. Snyder, the person against whom a petition for adjudication of bankruptcy, at and on the 14th day of January, 1871, was and still is justly and truly indebted to deponent, John P. Harrison, doing business at Kansas City under name and style of John P. Harrison, in the sum of six thousand eleven hundred and eighty-two dollars and ninety-five cents, the original consideration of said debt being for goods and wares and merchandise, settled and evidenced by notes now in judgement, sold and delivered to the said Joseph E. Snyder at his request; and said debt is evidenced and more fully set forth in the transcript hereto annexed and marked Exhibit "A" and made a part hereof; and deponent states that a judgement has been recovered on said debt; that said sum includes interest to the fourth of January, 1871, at the rate of six (6) per cent. per annum, for which said total sum of six thousand seven hundred and eighty-two dollars and ninety-five cents ($6,782.95) or any part thereof this deponent says that he has not nor has any person by his

order or to this deponent's knowledge or belief for his use had or received any manner of satisfaction or security whatsoever.

And this deponent further says that the said claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867; that no bargain or agreement, express or implied, has been made or entered into by or on behalf of this deponent to sell, transfer, or dispose of said claim or any part thereof against said bankrupt or to take or receive, directly or indirectly, any money, property, or consideration whatever whereby the vote of this deponent for assignee or any act on the part of this deponent or of any other person in the proceedings under said act has been, is, or shall be in any way effected, influenced, or controlled.

J. P. HARRISON,
Deposing Creditor.

Subscribed and sworn to before me this 14th day of February, 1871, and I certify that this proof is to me satisfactory.

J. V. C. KARNES,
U. S. Commissioner, District of Missouri.

Endorsed: Principal, 3,903.70; interest, 3,005.40—$7,009.10, seven thousand and nine dollars and ten cents, allowed on this claim to J. P. Harrison Aug. 3rd, '71. A. Krekel, judge.

EXHIBIT "A."

In the Circuit Court of Jackson County, State of Missouri.

Be it remembered that on this the September term, 1858, of our circuit court and on the 6th day of said term the following, among other, proceedings were had, to wit:

EUGENE JACCARD, AUGUSTUS S. MERNARD, and CONSTANCE JACCARD
vs.
JOSEPH EMILE SNYDER and JOSEPH GODARD.

617 *Petition and Attachment.*

Now, at this day, comes the plaintiffs aforesaid, by their attorneys, and, the said defendants failing to appear, it is ordered by the court that the inventory judgment rendered herein against the said defendants be, and the same is hereby, made final, and, the plaintiffs' demands being unliquidated, it is ordered that an inquiry of damages be awarded herein, and, the plaintiffs not requiring a jury to assess their damages herein, all and singular the premises are by them submitted to the court, which being by the court here seen and heard and fully enquired into, the court doth assess the damages of said plaintiffs at the sum of three thousand nine hundred and three dollars and seventy cents ($3,903.70) by reason of the nonperformance of the said defendants.

It is therefore considered by the court here that said plaintiffs recover against the said defendants the damages aforesaid so assessed by the court as aforesaid, together with their costs and charges in this behalf laid out and expended, and that they have thereof execution.

And it appearing to the court that the money accruing from the sale of the property herein is still in the hands of the sheriff of this county, it is ordered that the same be paid over or so much thereof as will satisfy this judgement, interest at six (6) per cent.

And on this 17th day of January, A. D. 1871, a power of attorney, executed by said plaintiffs, authorizing one John Y. Leveridge to assign, set over, and transfer said judgement to Joseph L. Norman was filed in my office and attached to the record of said judgement; which power of attorney is in words and figures as follows, to wit:

"Power of Attorney."

Know all men by these presents that we, Eugene Jaccard, D. C. Jaccard, and A. S. Mernard, do by these presents make, constitute, and appoint John Y. Leveridge, of the city of Kansas, Missouri, our true and lawful attorney for us and in our stead and names to assign, transfer, and set over unto Joseph L. Norman, of said Kansas City, a certain judgement recovered by us against one Joseph E. Snyder in the Jackson county, Missouri, circuit court, in the eighteenth day of September, A. D. 1858, for the sum of three thousand nine hundred and three dollars and seventy hundredths ($3,903.70), said judgement having been heretofore sold to said Joseph L. Norman by said Eugene Jaccard and Company and transferred to him in writing by said firm—

Hereby ratifying and confirming any and all things said attorney may lawfully do in the premises.

Witness our hands and seals this 7th day of January, 1871.

EUGENE JACCARD. [SEAL.]
S. L. MERMOD. [SEAL.]
D. C. JACCARD. [SEAL.]

[U. S. revenue stamp.] [U. S. revenue stamp.]

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that Eugene Jaccard, D. C. Jaccard, and A. S. Mermod, who are personally known to the undersigned, a notary public within and for said county, to be the persons whose names are subscribed to the foregoing power of attorney as parties thereto, this day appeared before me and acknowledged the same as their voluntary act and deed for the uses and purposes therein contained.

Given under my hand and notarial seal this seventh day of January, 1871.

JOSEPH H. TURNER,
Notary Public. [SEAL.]

618 And on the margin of the records of said judgement aforesaid appears an assignment in words and figures as follows, to wit:

"We, Eugene Jaccard, A. S. Mermod, and D. C. Jaccard, by John Y. Leveridge, our attorney-in-fact, for value received, do hereby assign, transfer, and set over unto Joseph L. Norman, of Kansas City, Missouri, all our right, title, and interest in and to this judgement this 17th day of January, A. D. 1871.

EUGENE JACCARD,
A. S. MERNOD,
D. C. JACCARD,
By JOHN Y. LEVERIDGE,
Their Attorney in-Fact.

Attest: WALLACE LAWS, *Clerk.*"

And on the margin of the record of said judgement aforesaid there appears another assignment, which is in words and figures as follows, to wit:

"For value received I hereby assign, transfer, and set over to John P. Harrison, of Kansas City, Missouri, all my right, title, and interest in and to this judgement this 17th day of January, 1871.

JOS. L. NORMAN.

Attest: WALLACE LAWS, *Clerk.*"

STATE OF MISSOURI, } *ss:*
Jackson County, }

—, Wallace Laws, clerk of the circuit court within and for the county of Jackson and State aforesaid, hereby certify that the foregoing is a true and perfect transcript of the judgement in the case of Eugene Jaccard, Augustus S. Mernard, and Constine Jaccard against Joseph Emile Snyder and Joseph Goddard, together with the power of attorney executed by the plaintiffs to John Y. Leveridge, and also the assignment of said judgment to J. L. Norman by said Leveridge, attorney-in-fact of plaintiffs, and of also the assignment of Jos. L. Norman to John P. Harrison, as the same remains of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of Independence, Missouri, this 19th day of January, A. D. 1871.

WALLACE LAWS, *Clerk*,
By JAS. E. McHENRY, *D. C.* [SEAL.]

Order of the court entered August 3rd, 1871, allowing claim of Jno. P. Harrison.

The claim of John P. Harrison, filed on February 28th, 1871, is, by the judge, here allowed for the sum of $7,009.10.

UNITED STATES OF AMERICA,
Western District of Missouri, Eastern Division, } ss:

I, Lewis Schmidt, clerk of the district court of the United States for the western district of Missouri, hereby certify that the writing hereto annexed is a true and complete transcript of the assignment of the estate and effects of Joseph E. Snyder, bankrupt, in bankruptcy (case No. 136); of the order of court of February 11th, 1871, accepting the resignation of A. Vose, assignee, and appointing Henry N. Ess assignee, &c.; of the proof of debt, with exhibits, filed by John P. Harrison, and of the order of court of Aug. 3rd, 1871, allowing said claim, as fully as the same remain on file and of record in said case in this office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of Jefferson, in said district, this 27th day of May, A. D. 1885.

LOUIS SCHMIDT, *Clerk.* [SEAL.]

619 UNITED STATES OF AMERICA,
Western District of Missouri, Eastern Division, } ss:

I, Arnold Krekel, judge of the district court of the United States for the western district of Missouri, hereby certify that Louis Schmidt, whose signature appears to the within certificate, is and was at the date thereof the clerk of said court, and that said certificate and attestation is — due form.

In witness whereof I have hereunto subscribed my name at office, in the city of Jefferson, in said district, this 30th day of May, A. D. 1885.

A. KREKEL,
District Judge.

Endorsed: 4668. Case No. 135. United States district court, western district of Missouri, eastern division. *In re* Joseph E. Snyder, bankrupt. Duly certified copy of —. Filed by Tourtelott in McAlpine *et al. vs.* Tourtelott *et al.* Filed June 1st, 1885. A. S. Thomas, clerk.

Judge BRUMBACK: "We desire to read a portion of this deposition of McAlpine's referring to those tax titles.

The COURT: "The whole deposition will have to go in then."

Judge BRUMBACK: "Yes, sir; the whole deposition can go in."

Defendants objected to this as incompetent, irrelevant, and immaterial.

The court overruled the objection; to which ruling of the court the defendants at the time excepted.

Said deposition is already in the record on pages 760 to 780.

Plaintiffs here ask leave of the court to amend its petition and place therein the statement "that plaintiffs are entitled to the immediate possession of the property in controversy," and same allowed.

Plaintiffs here rested their case.

Defendants here rested their case.

This was all the evidence there was in the case.

620 In the District Court of Shawnee County, Kansas.

GEORGE W. TOURTELOTTE and GEORGE P. ALLCUTT
against
WILLIAM WILKINS, NICHOLAS MCALPINE, *et al.*

Now come the defendants and ask the court to find especially the following facts:

I. That dating from as early as 1860 Joseph E. Snyder had an undivided equitable interest in all the lands now forming the present site of Kansas City, Kansas, consisting of portions of fractional sections 10 and 11, township 11 south, in range 25 east, in Wyandotte county, Kansas.

II. The said interest in lands was derived by said Snyder directly from James Gladden and David E. James and was held in secret trust in their names for the benefit of said Snyder from the year 1860 down to the year 1869, when it received its first permanent location under a deed to said Joseph E. Snyder from said David E. James and wife, of date April 13th, 1869.

III. That in 1864 David E. James and wife made and delivered to said Joseph E. Snyder an instrument in writing, blank as to name of grantee and blank as to the description of land, which was duly acknowledged and certified and which instrument bears date July 27th, 1864.

IV. That on ——, 1867, the owners in common of the said land in fractional sections 10 and 11 and said David E. James among the number, who prior to that time had held an undivided three-eighths (3/8) interest in said land, subject to the said claim of Snyder and others, in a certain suit in partition wherein Thomas Ewing *et al.* were plaintiffs and William Weer *et al.* were defendants, being suit No. 911 on the docket of the district court of Wyandotte county, Kansas, had partitioned to them by decree of said court their respective interests in said land, and among others said D. E. James had allotted to him in severalty a large tract of land of some 43 acres, which allotment is number 15 on the plat filed in said partition suit and includes the land in controversy and all the lands that were subsequently located to said Joseph E. Snyder.

V. That afterwards, on December 2, 1867, said Joseph E. Snyder filed in the western district of Missouri his voluntary petition in bankruptcy, and in his schedule of property filed therewith he set forth that he possessed no other property than his tools and implements of trade and certain exempted articles of household furniture.

VI. That said Snyder concealed from his assignee in bankruptcy and from his creditors in the bankrupt court all knowledge of said interest in said land so held by him and procured his discharge in bankruptcy in 1868 without scheduling said real estate.

VII. That afterwards the owners of land in said fractional sections 10 and 11, to prevent the washing away of the lands adjacent to the river by the current of the Missouri river, entered into an arrangement with James F. Joy, representing the Hannibal and St. Joseph Railroad Company, to donate lands along the river bank in consideration that said company would riprap the bank of said river with

rock to preserve the lands, and accordingly David E. James and others, the owners, deposited deeds in escrow, to be delivered to said James F. Joy on the completion of said riprapping, and the railroad company entered upon the prosecution of such work.

621 VIII. That after said arrangement with Joy and company and after he got his discharge in bankruptcy said Joseph E. Snyder, while said David E. James was absent in the State of Michigan, filled into the blank deed or instrument mentioned in finding number 3 a description of six (6) acres of land as follows, to wit: Commencing at a point north twenty-eight and one-half (28½) degrees west 3,604½ feet from the southeast corner of section 11, township 11, range 25, in the county of Wyandotte, State of Kansas, thence south 61½ degrees west 640 feet 2 inches; thence south 28½ degrees east 300 feet; thence north 61½ degrees east 871 feet and 2 inches, and thence along the southwest bank of the Missouri river north 28½ degrees west 300 feet; thence south 61½ degrees west 231 feet to the place of beginning, containing six (6) acres, together with all and singular the hereditaments, &c., and caused the same to be recorded in the office of the register of deeds in said county, in Liber "L," page 135, of said records, on the 23rd day of October, 1868.

IX. That afterwards said David E. James, on his return from the State of Michigan, learned that the said Joseph E. Snyder had filled in said deed his own name as grantee, and the description of land above described in finding number 8 expressed his dissatisfaction with that description of the property, and by mutual agreement between the said David E. James and Joseph E. Snyder the said Snyder and wife, by deed dated April 13 and acknowledged on April 14th, 1869, reconveyed to David E. James the said property, which said conveyance was duly recorded in the office of the register of deeds of said county July 1st, 1869, in Liber "M," page 208, of said Wyandotte county, and the said David E. James and his wife, in lieu thereof and in exchange therefor, conveyed to said Snyder, by deed dated April 13th, 1869, and acknowledged April 13th and 17th, 1869, the following-described lands, to wit, var. 11 degrees east:

Beginning at the southwest corner of a tract of land conveyed by said James to one James F. Joy and now known as railroad land, said southwest corner being the northwest corner of a certain parcel of land now owned by said James, thence running south 61 degrees 50 minutes west 580.8 feet; thence south 28 degrees ten minutes east 300 feet; thence north 61 degrees fifty minutes east 580 and $\frac{8}{10}$th- —; thence north 28 degrees ten minutes west 300 feet to the place of beginning, and all to contain four acres, said land being in township 11, range 25, in the above-mentioned county and State.

And said conveyance was duly recorded in the office of said register of deeds of Wyandotte county, Kansas, on the 5th day of February, 1870, in Liber "M," page 50, of said records.

X. That after this proceedings in the bankrupt court was instituted by the creditors of said Joseph E. Snyder to set aside his discharge in bankruptcy on the ground of fraud and concealment of assets, of which said proceedings and application to set aside his

discharge said Joseph E. Snyder was duly notified and appeared in said bankrupt court and answered thereto, that it was set up in said proceedings that the following lands belonged to the estate of the bankrupt, Joseph E. Snyder, viz:

Beginning at a point north 28½ degrees west, distant 3,604 feet and 6 inches from the southeast corner of section 11, township 11 south, range 25 east, of 6th principal meridian, in the State of Kansas, on the northwardly line of James street extended, as shown by the plat of Kansas City, Kansas, now on file in the office of the register of deeds of Wyandotte county, Kansas, on page 9 of the Book of Plats filed on the 3rd day of May, 1869, by D. E. James *et al.*, thence south 61½ degrees west 640 feet 2 inches; thence south 28½ degrees east 300 feet; thence north 61½ degrees east 640 feet 2 inches
622 to the said northwardly line of said James street extended; thence north 28½ degrees west on said northwardly line of James street 300 feet to the beginning, containing four (4) acres, more or less; and also a piece of land described as follows: Beginning at the same point as above described, thence north 61½ degrees east to the Missouri river; thence down along said river south 28½ degrees east 300 feet; thence south 61½ degrees west 231 feet to the northwardly line of said James street extended; thence north 28½ degrees west 300 feet to the beginning; 2 acres, more or less.

XI. That the bankrupt court ordered the above-described lands to be sold as bankrupt assets of the said Jos. E. Snyder, and the same was sold accordingly by the assignee in bankruptcy, Henry N. Ess, to Byron Judd for the recited consideration of $5,120; and thereupon, said sale was duly approved by said court and a deed thereof ordered to be made to the purchaser, and said assignee thereupon, by deed dated the 20th day of October, 1871, conveyed to the said Byron Judd the following-described lands, namely:

Beginning at a point north 28½ degrees west 3,604½ feet from the S. E. corner of section 11, township 11 south, range 25 east, of 6th P. M. on the northwestwardly line of James street extended as shown by the plat of Kansas City, Kansas, on file in the register of deeds office of said county of Wyandotte, on page 9 of the Book of Plats, filed on the 3rd day of May, 1869, by David E. James and others, thence south 61½ degrees west 640$\frac{2}{12}$ feet; thence south 28½ degrees east 300 feet; thence north 61½ degrees east 640$\frac{2}{12}$ feet to the said northwestwardly line of said James street extended; thence north 28½ degrees west on said northwestwardly line of James street 300 feet to the beginning, containing four (4) acres, more or less, and also beginning at the same point as last above and thence north 61½ degrees east to the Missouri river; thence down along said river south 28½ degrees east 300 feet; thence south 61½ degrees west 231 feet to the northwestwardly line of said James street extended; thence north 28½ degrees west three hundred feet to the beginning, containing two acres, more or less.

And the said deed was duly executed, acknowledged, certified, delivered, and recorded on the 27th day of October, 1871, in the office of said register of deeds in Wyandotte county, Kansas, in

Book 2, pages 189, 190, 191, and said assignee's deed included within its description the lands in controversy in this suit.

XII. That the defendant Nicholas McAlpine and the other defendants herein claiming under Byron Judd by a regular chain of conveyances through said Byron Judd and his assignees and grantees succeeded to said bankrupt title; which is a matter of record in said office of the register of deeds in Wyandotte county, Kansas.

XIII. That the land in controversy in this suit is the land included in the description in that bankrupt deed.

XIV. That said parties, the defendants, have been in actual possession of the lands in controversy ever since the early spring of 1874, and held such possession and had a tenant living as an actual occupant on the said four-acre tract of land above described, which is located on the westerly side of James street, from the early spring of 1874 down to the time that said defendant, N. McAlpine, purchased the same in the year 1879, and said tenant was an actual occupant upon the said lands at the time that the attachments under which said plaintiffs claim title were issued and attempted to be levied on the land in controversy.

XV. That on the 16th day of May, 1874, two suits were
623 commenced in the district court of the State of Kansas for the county of Wyandotte against one Joseph E. Snyder, then a non-resident of said State—one by Henry R. Seegar and one by C. F. Welland; an order of attachment was issued in each of said suits to the sheriff of said Wyandotte county without bonds being filed in said suits by the plaintiffs.

That said sheriff made a return of his doings under each of the said orders of attachment, and neither of said returns recites that he left a copy of said orders or either of them with an occupant of any of the lands claimed by the plaintiffs in this action, nor does said returns or either of them recite or show that there was then no occupant of said lands, nor does said return- or either of them recite or show that he left or posted a copy of said orders or either of them in a conspicuous place or in any place on said lands claimed by plaintiffs herein; that in said actions aforesaid judgments were rendered by said court at its September term, 1874, against the defendant Joseph E. Snyder, who did not answer or appear to said suits or either of them, nor was said Joseph E. Snyder personally served with summons in either of said actions or otherwise notified of the pendency thereof except by publication; that a special execution was issued in each of said suits to the sheriff of said Wyandotte county commanding him to sell the lands in controversy herein, which writs were executed by him and the said lands were sold by him at public sale to one Lafayette Traber, and the deed of the same was executed to said Traber; that subsequently said Traber conveyed the same lands to the present plaintiffs to this suit, whose sole title to the lands in controversy in this suit was derived from said sheriff's sale as aforesaid.

XVI. The court further finds that at the time of the issuing of the said orders of attachment of the return of the same said lands

was actually occupied by one Enos Long as the tenant of Cobb and Bartlett.

And as conclusions of law the defendants ask the court to find:

1. That the title conveyed to Byron Judd under the bankrupt deed of the 20th day of October, 1871, is a good and valid title to the lands in controversy in this suit.

2nd. That the claims of title of said plaintiff founded on the attachment deeds introduced in evidence in this cause are void for the reason that the title had, prior to the proceedings on which the same were founded, passed to the grantors of the defendants under said deed of said assignee, and for the further reason that said attachment proceedings on which said attachment deeds were founded were without jurisdiction.

3rd. And that the defendants have both the title and the possession of the lands in controversy, and this suit ought to be dismissed at the cost of the plaintiffs.

624 And thereupon, on the 11th day of January, A. D. 1887, the following proceedings were had, to wit:

This case, having heretofore been submitted herein, now comes on for decision, and thereupon, after due consideration and on examination of all material matter of law and fact connected with said case, the court finds and determines and finds the following conclusions of fact, to wit:

The court finds the following conclusions of fact:

First. That in 1860 David E. James was the owner of an undivided three-eighths ($\frac{3}{8}$) interest in a portion of what is known as Armstrong's reserve No. 1, and March 5th, 1860, James executed James Gladden a title bond for an undivided ten (10) acres of this land and described the premises as the west half ($\frac{1}{2}$) of the southwest quarter of section eleven (11) and the east half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of section ten (10), in township eleven (11), and being in the fork of the Kansas and Missouri rivers in Wyandotte county.

Second. That on the same day said James Gladden, in writing, assigned and transferred this bond for a deed to one Henry R. Seegar for the nominal consideration of one thousand dollars ($1,000), but, in fact, without any consideration, and which assignment, made by the said Gladden to the said Seegar, was duly executed, acknowledged, and proved by the said Gladden on March 6th, 1860, and recorded in the proper register of deeds' office of Wyandotte county October 1st, 1860, a copy of which bond and assignment is as follows:

Know all men by these presents that I, David E. James, of the county of Wyandotte and Territory of Kansas, do hereby bind myself, my heirs and assigns, to convey unto James Gladden, his heirs and assigns, by a good and valid deed one undivided ten (10) acres of the west half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of section number eleven (11) and of the east half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of section number ten (10), in township number eleven (11), being in the forks of the Kansas and Missouri rivers, in the county

of Wyandotte, K. T., and all consisting of one undivided ten (10) acres. It is hereby covenanted and agreed that the aforesaid conveyance shall be made at any time within one year from the date of this instrument.

It is also agreed and understood that said conveyance is to be made subject to and in accordance with the terms and conditions of a certain mortgage given upon said real estate by said James to one Silas Armstrong and which is recorded in the proper office of the county of Wyandotte, K. T.

In witness whereof I have hereunto set my hand and seal this 5th day of March, A. D. 1860.

DAVID JAMES. [L. S.]

Know all men by these presents that the within-named James Gladden, in consideration of one thousand dollars ($1,000) to me in hand paid by Henry R. Seegar, the receipt of which I do hereby acknowledge, have bargained, sold, assigned, and set over all my right, title, interest, claim, property, and demand whatsoever in and to the within bond unto the said Henry R. Seegar and his assigns forever.

In witness whereof I have hereunto set my hand and seal this 5th day of March, A. D. 1860.

JAMES x GLADDEN. [L. S.]
his
mark.

In the presence of—
LOUIS B. SCOTT.
JOSEPH E. SNYDER.

625 STATE OF MISSOURI, } ss:
Jackson County, }

Be it remembered that on the 6th day of March, 1860, before me, John J. Hough, of Kansas City, court of common pleas for Kaw township, in the county and State aforesaid, personally appeared James Gladden, who is well known to me as the person whose name is subscribed to the foregoing instrument of writing, and acknowledged the same to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Kansas, on the day and date above written.

JOHN G. HOUGH, *Clerk*,
[L. S.] By LOUIS B. SCOTT, *D. C.*

Recorded October 1st, A. D. 1860, at 5 p. m.

M. V. J. LANE,
Register of Deeds,
By JAMES A. CRUISE, *D. R.*

Third. That on July 27th, 1864, said David E. James executed and delivered to said Snyder an alleged blank deed, so called, in which the name of the grantee and description of any property

were omitted, and authorized said Snyder to fill it up at such time as he might desire with six (6) acres on the bank of the Missouri river, somewhere between the State line and the mouth of the Kansas river.

Fourth. That on January 23rd, 1867, Thomas Ewing, Jr., and others commenced an action in the district court of Wyandotte county against William Weer, Thomas H. Swope, David E. James, and others, defendants, among which was the said Henry R. Seegar, for the purpose of obtaining a decree of partition of those premises thus described in the petition in said action: "All that parcel of land lying in the forks of the Missouri and Kansas rivers and between the Missouri State line and the Kansas river as lies north of Turkey creek, containing about two hundred and fifty (250) acres, more or less," and in this petition it was alleged that Henry R. Seegar was, with other defendants, joint owners of certain of these premises, but in what particular parts and proportion they severally owned and were seized was to the plaintiffs then unknown.

Fifth. That afterwards such proceedings were had in said action for partition in said court that there was assigned, allotted, and decreed to David E. James a tract of forty-three and one-half (43½) acres of said premises.

Sixth. That in 1868, while James was absent from this State, the said Joseph E. Snyder filled up the deed referred to in conclusion of fact number three (3) by inserting his own name as grantee and with a description of land by metes and bounds of six (6) acres on the bank of the Missouri river, and filed the deed, thus apparently perfect and complete for record, in the office of the register of deeds for Wyandotte county; which alleged deed is in words and figures following:

This indenture made this 27th day of July in the year of our Lord one thousand eight hundred and sixty-four between David E. James and Jennie M. James, his wife of the first part, and Joseph E. Snyder of the second part, witnesseth:

That the said party of the first part for and in consideration of the sum of one dollar to — in hand paid by the said party of the second part the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, remised, released, aliened, and confirmed and by these presents do grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, heirs and assigns forever—commencing at a point north twenty-
eight and one-half (28½) degrees west 3,604½ feet from the
626 southeast corner of section 11, township 11, range 25, in the county of Wyandotte, State of Kansas; thence south 61½ degrees west six hundred and forty (640) feet and two (2) inches; thence south twenty-eight and one-half (28½) degrees east, three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east eight hundred and seventy-one (871) feet and two (2) inches; thence along the southwest bank of the Missouri river, north twenty-eight and one-half (28½) degrees west three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two

hundred and thirty-one (231) feet to the place of beginning, containing six (6) acres.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining and the reversion and reversions, remainder, and remainders, rents, issues and profits thereof and all the estate, right, title, interest, demand whatsoever of the said party of the first part either in law or in equity of, in and to the above-bargained premises with the hereditaments and appurtenances.

To have and to hold the same premises as above described with the appurtenances unto the said part- of the second part and to his heirs and assigns forever.

In witness whereof, the party of the said first part have hereunto set — hand- and seal- the day and year first above written.

D. E. JAMES. [L. S.]
JENNY M. JAMES. [L. S.]

Sealed and delivered in the presence of—
F. L. PARKER.
TRACY W. ROOT.

STATE OF MICHIGAN, } ss:
Washtenaw County, }

On this 2nd day of August, A. D. 1864, before me, the subscriber, clerk of the circuit court of Washtenaw county aforesaid, personally appeared David E. James and Jenny M. James, to me personally known to be the identical persons described in and who executed the within conveyance, and acknowledged the instrument to be their own voluntary act and deed; and the said Jenny M. James, on an examination apart from her said husband, having been first made acquainted with the contents of such conveyance, acknowledged that she executed the same and relinquished her dower in the real estate therein mentioned freely and without any fear or compulsion of her said husband.

[SEAL.] TRACY W. ROOT, *Clerk.*

Recorded October 23rd, A. D. 1868, at 9 a. m.
JAMES A. CRUISE,
Register of Deeds.

Seventh. That on the 12th day of April, 1869, Snyder conveyed this property back to James, a copy of which deed, with certificate of acknowledgement and record in the office of the register of deeds, — as follows:

[U. S. revenue stamp, 50 cents.]

This indenture, made this 12th day of April, in the year of our Lord one thousand eight hundred and sixty-nine, between Joseph E. Snyder and Teressa Snyder, his wife, of the first part, and David E. James, party of the second part, witness:

That said party of the first part, in consideration of the sum of

one dollar to them duly paid, do by these presents grant and convey to said party of the second part, his heirs and assigns, all that tract or parcel of land situate in the county of Wyandotte and State of Kansas and described as follows, to wit:

Commencing at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in the county of Wyandotte and State of Kansas, thence south sixty-one and one-half (61½) degrees west six hundred and forty (640) feet and two (2) inches; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east eight hundred and seventy-one (871) feet two (2) inches; thence along the southwest bank of the Missouri river north twenty-eight and one-half (28½) degrees west three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the place of beginning, containing six (6) acres, with the appurtenances, and all the estate, title, and interest of the said party of the first part therein; and the said Joseph E. Snyder and Teressa, his wife, do hereby covenant and agree that at the delivery hereof they are the lawful owner- of the premises above granted and seized of a good and indefeasible estate of inheritance therein, and that they will warrant and defend the same in the quiet and peaceable possession of said parties of the second part, their heirs and assigns forever.

627

In witness whereof the said party of the first part have hereunto set their hands and seal- this day and year above written.

JOSEPH E. SNYDER.
TERESA SNYDER.

Executed and delivered in presence of—
C. MOHR.

STATE OF MISSOURI, } ss:
County of Jackson, }

On the 14th day of April, A. D. 1869, before me, clerk of the Kansas city court of common pleas in and for said county, came Joseph E. Snyder and Teressa Snyder, his wife, who are personally known to be the same persons who executed the foregoing instrument, and duly acknowledged the execution of the same.

In testimony whereof I have hereunto subscribed my name and affixed my official — the day and year last above written.

[SEAL.] C. H. VINCENT, *Clerk.*

Recorded July 1st, A. D. 1869, at 9 a. m.

JAMES A. CRUISE,
Register of Deeds.

Eighth. That on the 13th day of April, 1869, the said David E. James and wife executed, made, acknowledged, and delivered to

Joseph E. Snyder the following deed, which was recorded in the office of the register of deeds at the time hereinafter mentioned, to wit:

[U. S. revenue stamp, 50 cents.]

This indenture made this 12th day of April, in the year of our Lord one thousand eight hundred and sixty-nine between David E. James and Jennie M. James, his wife of the first part and Joseph E. Snyder, party of the second part, witnesseth:

That the said party of the first part in consideration of the sum of one dollar to them paid, have sold, and by these presents do grant and convey to the said party of the second part, his heirs and assigns all that tract or parcel of land situated in the county of Wyandotte, and State of Kansas, and described as follows, to wit:

Var. 11 degrees east, beginning at the southwest corner of a tract of land conveyed by said James to one James F. Joy and now known as railroad land, said southwest corner being the northwest corner of a certain parcel of land now owned by said James; thence running south sixty-one (61) degrees and fifty (50) minutes west five hundred and eighty and eight-tenths (580.8) feet; thence south, twenty-eight (28) degrees ten (10) minutes east three hundred (300) feet; thence north sixty-one (61) degrees fifty (50) minutes east five hundred and eighty and eight-tenths (580.8) feet and thence north twenty-eight (28) degrees and ten (10) minutes west three hundred (300) feet to the place of beginning, and all to contain four (4)
628 acres, said land being in township eleven (11), range twenty-five (25) in the above-mentioned county and State.

This conveyance is made subject to the claim of a mortgage of fifty dollars ($50.00) per acre given to Silas Armstrong by said James also subject to the claim of one hundred and twenty-five dollars ($125.00) due to C. F. Welland due on or before May 12th, 1869, with interest at the rate of ten (10) per cent. per annum; also taxes due now upon said above-described land amounting to seventeen dollars and fifty cents ($17.50) more or less, with the appurtenances and all the estate and title and interest of the first party therein; and the said David E. James and Jennie M. James his wife do hereby covenant and agree that at the delivery hereof they are the lawful owner- of the premises above granted and seized of a good and indefeasible estate of inheritance therein, and that they will warrant and defend the same in the quiet and peaceable possession of said party of the second part, his heirs and assigns forever.

In witness whereof, said parties of the first part have hereunto — their hand- and seal- the day and year above written.

D. E. JAMES. [SEAL.]
JENNIE M. JAMES. [SEAL.]

Executed and delivered in the presence of—
GEORGE B. WOOD.
E. B. BOND AND
G. R. PORTER,
For Mrs. James.

STATE OF KANSAS, } ss:
County of Wyandotte, }

On the 13th day of April, A. D. 1869, before me, a notary public within and for said county, came David E. James, to me personally known to be the same person who executed the foregoing instrument, and acknowledged duly the execution *for* the same.

In testimony hereof I have, the day and year last above written, hereunto subscribed my name and affixed my official seal.

All interlineations made before signing.

M. B. NEWMAN,
Notary Public. [SEAL.]

STATE OF MICHIGAN, } ss:
County of Washtenaw, }

On this 17th day of April, A. D. 1869, before me, the county clerk in and for said county, came Jennie M. James, personally known to me to be the same person who executed the foregoing instrument, and duly acknowleded the execution of the same.

In witness whereof I have hereunto subscribed my name and affixed my official seal the day and year last above written.

All interlineations made before signing.

JOHN J. ROBINSON, *Clerk.* [SEAL.]

[U. S. revenue stamp, 5 cents.]

Ninth. That on December 2nd, 1867, the said Joseph E. Snyder filed in the United States district court for the western district of Missouri his voluntary petition in bankruptcy, and in his schedule of property filed therewith Snyder set forth that he possessed no other property than his tools and implements of trade and certain exempt articles of household furniture.

Tenth. This said Snyder was on said 2nd day of December, 1867, when he filed his voluntary petition in bankruptcy, the holder and owner of the title bond described in the conclusion of fact number first, and did not disclose said bond or blank deed to the bankruptcy court or his assignee, and concealed the said paper from his said assignee and his creditors and knowledge of his interest in said land, if any he had, and procured from said district court of the United States for the western district of Missouri his discharge in 1868 without scheduling said real estate.

629 Eleventh. That after the said Snyder had procured his said discharge from bankruptcy from said court the said creditors of said Snyder begun proceedings in said court to set aside the discharge of the said Snyder on the ground that the said Snyder had fraudulently concealed from said court, his assignee, and creditors the assets belonging to his said estate, and of which said proceedings and application to set aside his discharge in bankruptcy the said Snyder was duly notified and appeared in said court *to* and answered to said proceedings; that it was alleged by said creditors in said proceedings that the following lands and tenements belonged to the estate in bankruptcy of said Snyder, viz:

Beginning at a point north twenty-eight and one-half (28½) degrees

west, distant thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11) south, range twenty-five (25) east, of the sixth (6th) principal meridian, in the State of Kansas, on the northwardly line of James street extended, as shown by the plat of Kansas City, Kansas, now on file in the office of the register of deeds in Wyandotte county, Kansas, on page 9 of the Book of Plats filed on the 3rd day of May, 1869, by D. E. James and others, thence south sixty-one and one-half (61½) degrees west six hundred and forty (640) feet two (2) inches; thence south twenty-eight and *eight and* one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty (640) feet two (2) inches to the said northwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west on said northwardly line of James *of James* street three hundred 300) feet to the place of beginning, containing four (4) acres, more or less.

And also a piece of land described as follows:

Beginning at the same point as above described, thence north sixty-one and one-half (61½) degrees east to the Missouri river: thence down along said river south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the northwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west to the beginning, two (2) acres, more or less.

Twelfth. That afterwards, by the consideration of said the district court of the United States for the western district of Missouri, on the hearing of said proceedings, it was ordered and decreed that the said discharge in bankruptcy of the said Snyder be, and the same was, set aside by said court; and it was further ordered by said court that the assignee in said court file a complete schedule of all the property belonging to the estate of said bankrupt Snyder remaining yet undisposed of.

Thirteenth. That afterwards, on August 19th, 1871, the said assignee in bankruptcy filed a schedule of property belonging to the estate of said bankrupt, and which schedule described the following property, viz:

No personal property found; the said bankrupt owns the following-described real estate, situated in Kansas City, Wyandotte county, Kansas, and bounded as follows:

Beginning at a point north twenty-eight and one-half (28½) degrees west, distant three thousand six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11) south, range twenty-five (25) east, of the sixth principal meridian, in the State of Kansas, on the northwardly line of James street extended, as shown by the plat of Kansas City, Kansas, now on file in the office of the register of deeds *office* in Wyandotte county, Kansas, on page 9 of the Book of Plats filed on the 3rd day of May, 1869, by D. E. James *et al.*, thence
630 south sixty-one and one-half (61½) degrees west six hundred

and forty (640) feet two (2) inches; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty (640) feet two (2) inches to the said northwardly line of James street extended; thence north twenty-eight and one-half (28½) degrees west on said northwardly line of James street three hundred (300) feet to the beginning, containing four (4) acres more or less.

And also a piece of land described as follows:

Beginning at the same point above described, thence north sixty-one and one-half (61½) degrees east to the Missouri river; thence down along the said river south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the northwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west three hundred (300) feet to the beginning, containing two (2) acres, more or less.

Fourteenth. That on August 24th, 1871, the court made an order directing the assignee in bankruptcy to appraise said premises according to law and to sell the same at public or private sale, as he might desire for the best interest of the creditors.

Fifteenth. That afterwards, on October 12th, 1871, the said assignee in bankruptcy reported to said court in writing that he had sold said premises to B. Judd for the sum of $5,120.

Sixteenth. That afterwards, on the 14th day of October, 1871, the said court, having been fully advised in the premises, approved and confirmed said sale and made an order directing the said assignee in bankruptcy to make — deliver to said purchaser a deed of conveyance for said premises.

Seventeenth. That afterwards, on the 20th day of October, 1871, assignee in bankruptcy made and delivered to said Byron Judd a deed of conveyance for said premises, in obedience to the said order of the said district court of the United States for the western district of the State of Missouri, and that said deed contained the following-described premises, viz:

Beginning at a point north twenty-eight and one-half (28½) degrees west thirty-six hundred and four and one-half (3,604½) feet from the southeast corner of section eleven (11), township eleven (11) south, of range twenty-five (25) east, of the sixth (6th) principal meridian, of the northwestwardly line of James street extended, as shown by the plat of Kansas City, Kansas, on file in the register of deeds' office of said county of Wyandotte, page 9 of the Book of Plats, filed on the 3rd day of May, A. D. 1869, by David E. James and others, thence south sixty-one and one-half (61½) degrees west six hundred and forty (640) feet and two (2) inches; thence south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence north sixty-one and one-half (61½) degrees east six hundred and forty (640) feet two (2) inches to the said northwestwardly line of said James street extended; thence north twenty-eight and one-half (28½) degrees west on said northwestwardly line of James street extended three hundred (300) feet to the beginning, containing four (4) acres, more or less.

Also beginning at the same point as last above, and thence north sixty-one and one-half (61½) degrees east to the Missouri river; thence down along said river south twenty-eight and one-half (28½) degrees east three hundred (300) feet; thence south sixty-one and one-half (61½) degrees west two hundred and thirty-one (231) feet to the northwardly line of said James street extended;
631 thence north twenty-eight and one-half (28½) degrees west three hundred (300) feet to the beginning, containing two (2) acres, more or less; and the said deed was duly executed, acknowledged, certified, delivered, and recorded on the 27th day of October, 1871, in the office of said register of deeds, in Wyandotte county, Kansas, in the Book Q, pages 189, 190, & 191.

Eighteenth. That the defendant Nicholas McAlpine and the other defendants herein claim under the same Byron Judd by regular chain of conveyance through said Byron Judd and his assignees and grantees, succeeding to said bankrupt title, which is a matter of record in the register of deeds office of Wyandotte county.

Nineteenth. The said parties, the defendants, have been in actual possession of the lands in controversy ever since the early spring of 1874 and held such possession and had a tenant living as actual occupant of the said four (4) acre tract of land described, which is located on the westerly side of James street, from the early spring of 1874 and down to the time the said Nicholas McAlpine purchased the same, in the year 1879, and said tenant was an actual occupant upon the said land at the time the attachment under which said plaintiff- claim title *were* issued and attempted to be levied on the lands in controversy.

Twentieth. That on May 16th, 1874, Henry R. Seegar commenced an action by attachment against the said Joseph E. Snyder in the district court of Wyandotte county for the purpose of recovering the sum of four hundred and eighty-one dollars and fifty cents ($481.50), with interest, at the rate of six (6) per cent. per annum, from October 18th, 1873, and there was issued by the clerk of said court and directed to the sheriff of said county the following order of attachment, and said order of attachment was executed by said sheriff, as appears by said order of attachment and the return of said sheriff thereon and thereto attached; which order of attachment and return of said sheriff *was* as follows:

In the District Court of the State of Kansas in and for the County of Wyandotte.

HENRY R. SEEGAR, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant.

The State of Kansas to the sheriff of Wyandotte county, in said State, Greeting:

You are hereby commanded to attach and safely keep the lands, tenements, goods, chattels, rights, stocks, credits, moneys, and effects of the defendant Joseph E. Snyder in your county not exempt by

law from being applied to the payment of the claim of the plaintiff, or so much thereof as will satisfy his claim for four hundred and eighty-one and fifty hundredths ($481.50) dollars, with interest, at the rate of six (6) per cent. per annum, from the 18th day of October, A. D. 1873, and fifty dollars ($50.00), the probable costs of this action, and of your proceedings hereunder make due return within ten (10) days from the date hereof.

Witness my hand and the seal of said court affixed, at my office, in the city of Wyandotte, this the 16th day of May, A. D. 1874.

G. W. BETTS, *Clerk*,
Per J. W. REED, *D. C.* [SEAL.]

632 STATE OF KANSAS, } *ss:*
County of Wyandotte, }

Received this order of attachment on the 16th day of May, A. D. 1874, at — o'clock m.; and thereupon, to wit, on the 16th day of May, 1874, at my county, I attached as the property of the within-named Joseph E. Snyder, as described in the appraisement hereto attached and made a part of this return, by declaring on the premises that I attached said property at the suit of the within-named Henry R. Seegar and by taking the same into my possession, and now hold the same subject to the order of the court, and with F. W. Drought and S. Bolmer, two householders of my county, who were by me on the same day first duly sworn to make a true inventory and appraisement of all the property so attached, I made a true inventory and appraisement of all the property so attached, and which said inventory and appraisement is signed by the said householders and by myself and is returned with this order, and on the same day I left a true copy of this order,

Fees:

Service	$1 00
Appraisement	1 00
Appraisers' fees	2 00
Summoning two appraisers	1 00
Mileage	40
	$5 40

E. S. W. DROUGHT, *Sheriff*,
By W. H. RYUS, *Deputy Sheriff*.

And the appraisement thereto in attachment — as follows:

In the District Court of the State of Kansas in and for the County of Wyandotte.

HENRY R. SEEGAR }
vs.
JOSEPH E. SNYDER. }

We, the undersigned, W. H. Ryus, under sheriff of said county of Wyandotte, with F. W. Drought and S. Bolmer, householders of

said county, do hereby make a true inventory and appraisement of all the property attached by said sheriff by virtue of the order of attachment in said cause issued and now in the- hands for execution as follows, to wit:

Lands and tenements in said county: Beginning at a point 640 feet 2 inches south 61 degrees 30 minutes west from another point 3,604½ feet north twenty-eight degrees thirty (30) minutes west from the southeast corner of section eleven (11), in township eleven (11), of range twenty-five (25), in Wyandotte county, Kansas, and running from said first-named point south sixty-one (61) degrees and thirty (30) minutes west along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to the beginning, at the sum of $433.33 and ⅓; also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point 3,504½ feet north 28 degrees 30 minutes west from the southeast corner of section eleven (11), in township eleven (11), of range twenty-five (25), in Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of $433.33⅓.

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point 3,404½ feet north 28 degrees 30 minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas,
633 and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of $433.33 & ⅓.

16th May, 1874.

E. S. W. DROUGHT, *Sheriff*,
By W. H. RYUS, *Deputy*.
F. W. DROUGHT.
S. BOLMER.

Twenty-first. And that on the same day, to wit, May 16th, 1874, C. F. Welland commenced an action by attachment against said Joseph E. Snyder, in the district court of Wyandotte county, for the

purpose of recovering the sum of two hundred and fifty dollars ($250), with interest at the rate of ten (10) per cent. per annum from the 8th day of February, 1869, and there was issued by the said clerk of said court and directed to the sheriff of said county the following order of attachment, and the said order of attachment was executed by said sheriff as appears by said order of attachment and the return of said sheriff thereon thereto attached; which order of attachment and return of said sheriff *was* as follows:

In the District Court of the State of Kansas in and for the County of Wyandotte.

C. F. WELLAND, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant.

The State of Kansas to the sheriff of Wyandotte county, in said State, Greeting:

You are hereby commanded to attach and safely keep the lands, tenements, goods, chattels, stocks, rights, credits, moneys, and effects of the defendant, Joseph E. Snyder, in your county, now exempt by law from being applied to the payment of the claim of the plaintiff, or so much thereof as will satisfy his claim for two hundred and fifty dollars ($250.00), with interest at the rate of ten (10) per cent. per annum from the 8th day of February, A. D. 1869, and fifty dollars ($50.00), the probable costs of this action, and of your proceedings hereunder make due return within ten (10) days from the date hereof.

Witness my hand and the seal of said court affixed at my office, in the city of Wyandotte, this 16th day of May, A. D. 1874.

G. W. BETTS, *Clerk*,
Per J. W. REED, *D. C.* [SEAL.]

Appearance docket D, No. 1735. District court, Wyandotte county. Attachment issued May 16th, A. D. 1874. C. F. Welland *vs.* Joseph E. Snyder. Brumback and Traber, attorneys. Filed May 25th, 1874. G. W. Betts, clerk.

STATE OF KANSAS,
County of Wyandotte, } *ss:*

Received this order of attachment on the 16th day of May, A. D. 1874, at — o'clock m., and thereupon, to wit, on the 16th day of May, 1874, at my county, I attached as the property of the within-named Joseph E. Snyder, as described in the appraisement hereto attached and made a part of this return, by declaring on the premises that I attached said property at the suit of the within-named C. F. Welland, subject to the attachment on the same day made in favor of Henry R. Seegar, issued from the 10th district court, Wyandotte county, Kansas, by taking the same into my possession, and now hold the same subject to the order of the court, and with F. W.

Drought and S. Bolmer, two disinterested householders of my county, who were by me first on the same day duly sworn to make a true inventory and appraisement of all the property so attached, I made a true inventory and appraisement of all the property so attached, and which said inventory and appraisement is signed by the
634 said householders and by myself and is returned with this order, and on the same day I left a true copy of this order.

Fees—service, $1.00; appraisement, $1.00; appraisers' fees, $2.00; summoning two appraisers, $1.00; mileage, .40; $5.40.

E. S. W. DROUGHT, *Sheriff*,
By W. H. RYUS, *Deputy Sheriff*.

In the District Court in and for the State of Kansas and Wyandotte County.

C. F. WELLAND
vs.
JOSEPH E. SNYDER.

We, the undersigned, W. H. Ryus, under sheriff of the said county of Wyandotte, with F. W. Drought and S. Bolmer, householders of said county, do hereby make a true inventory and appraisement of all the property attached by the said sheriff by virtue of the order of attachment in said cause issued and now in his hands for execution as follows, to wit, lands and tenements in said county: Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point thirty-six hundred and four and one-half (3,604½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), in township eleven (11), of range twenty-five (25), in Wyandotte county, Kansas, and running from said first-named point south sixty-one (61) degrees and thirty (30) minutes east along the northwest line of the land formerly belonging to David E. James two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet to beginning, at the sum of $433.33 & ⅓.

Also beginning at a point six hundred and forty (640) feet and two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point 3,504½ feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred (100) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and

thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of $433.33 & ⅓.

Also beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point 3,404½ feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in Wyandotte county, Kansas, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty (30) minutes east one hundred (100); thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) *feet* and thirty (30) minutes west one hundred (100) feet to the place of beginning, at the sum of $433.33 & ⅓.

E. S. W. DROUGHT, *Sheriff*,
By W. H. RYUS, *Deputy*.
F. W. DROUGHT.
S. BOLMER.

Twenty-second. That Snyder was divested of his title to said land by the judicial sale upon the judgements obtained against him by the said C. F. Welland and Henry R. Seegar in the said district court of Wyandotte county.

635 Twenty-third. That at the time of the commencement of the said actions, of which the above-named judgements were obtained, the defendant Joseph E. Snyder was a non-resident of the State of Kansas and jurisdiction was obtained in said actions, by said proceedings in attachment thereon, against the lands in controversy in this action.

Twenty-fourth. That said attachment orders, returns, and proceedings were sufficient to vest the court with jurisdiction in said actions.

Twenty-fifth. That the plaintiffs herein hold by regular legal conveyance and title, acquired by the purchaser at said sale under said attachment proceedings.

Twenty-sixth. That the tax deeds to C. I. Richards and J. C. Douglass and the conveyances from them to defendants vest no title in the land in dispute to Nicholas McAlpine.

Twenty-seventh. That the deed from the widow and children of David E. James to the defendant McAlpine conveyed no title, because the said James in his lifetime, together with his wife, had conveyed by warranty deed to Joseph E. Snyder, under whom the plaintiffs claim.

Twenty-eighth. That in the fall of 1868 the owners of the land in said fractional sections ten (10) and eleven (11) to prevent the washing away of the lands adjoining the Missouri river by the current thereof entered into an agreement with James F. Joy, representing the Hannibal and St. Joseph Railroad Company, to donate lands along the river bank in consideration that said company would riprapp the bank of said river with rock to preserve the lands, and

accordingly *by* David E. James and others of the owners deposited deeds in escrow, to be delivered to said James F. Joy on the completion of said riprapping, and the said railroad company entered upon the prosecution of the work.

Twenty-ninth. That after the said arrangement with Joy and company and after Snyder had obtained his discharge in bankruptcy the said Snyder, while the said James was absent from the State and was in the State of Michigan, filled in the blank deed or instrument mentioned in finding number 3, a description of the premises therein described, and also inserted his own name as grantee, as hereinbefore stated in conclusion of fact No. 6.

Thirtieth. That afterwards said David E. James, on his return from the State of Michigan, learning that the said Joseph E. Snyder had filled in said deed his own name as grantee and the description of the land described in said deed in conclusion of fact number 6, expressed his dissatisfaction with the description of the property and, by mutual agreement between said David E. James and Joseph E. Snyder, said Snyder and wife made and executed the deed dated April 12th and acknowledged April 14th, 1869, referred to and set forth in the conclusion of fact number 7, in exchange for the lands described in the deed mentioned in finding of fact No. 8.

Thirty-first. That said James F. Joy or the railroad for whom he was acting complied with and carried out the agreement for riprapping the bank of the Missouri river, referred to in conclusion of fact number 28, and received deeds for the lands along the bank of said river from the others of the lands in said fractional sections Nos. 10 and 11 aforesaid.

636 To the findings of each of the foregoing conclusions of fact the plaintiffs and defendants each separately object and except and still object and except.

And the court finds the following conclusions of law:

First. That the title bond made by David E. James to James Gladden and by him assigned to Henry R. Seegar and held by the said Joseph E. Snyder did not vest in the said Snyder any title, legal or equitable, in the premises described in the plaintiffs' petition.

Second. That the deed described in conclusion of fact number 3 did not vest in the said Snyder any legal title or equitable in the premises described in the plaintiffs' petition.

Third. That on December 2nd, 1867, when the said Snyder filed his petition in bankruptcy in the district court of the United States for the district of Missouri, the said Snyder was not the owner of the legal or equitable title or any estate in the premises described in the plaintiffs' petition.

Fourth. That on April 13th, 1869, after the said Snyder had been adjudged a bankrupt in the court of competent jurisdiction aforesaid, Snyder acquired the legal and equitable title to the premises described in the plaintiffs' petition from the said David E. James by virtue of the deed of conveyance described in conclusion of fact No. 8, and that the said premises were no part of the estate of the said

Snyder at the time he was adjudged a bankrupt, and that, therefore, the district court of the United States for the district of Missouri, sitting as a court of bankruptcy, had no jurisdiction to sell or dispose of the said premises to Byron Judd, and the sale of said premises described in the deed of conveyance made by the assignee in bankruptcy to Judd conveyed no title, legal or equitable, to said Judd or those holding under him.

Fifth. That by virtue and force of the two orders of attachment issued by the clerk of the district court of Wyandotte county on the 14th day of May, 1874, in the action then commenced in said court by Henry R. Seegar against the said Joseph E. Snyder and the action of C. F. Welland against the said Snyder and the return of the sheriff of Wyandotte county of his official acts under said two writs of attachment, the said court acquired and had jurisdiction of the real estate described in the plaintiffs' petition and vested said title to said premises in the purchaser at the sheriff's sale held and made in pursuance of the judgements of said court, and that the plaintiffs herein hold by regular conveyance and title acquired from the purchase at said sheriff's sale under said attachment proceedings.

Sixth. That the plaintiffs are the owners of the legal and equitable title to the premises described in plaintiffs' petition and are entitled to the possession of said premises, and the defendants unlawfully keep the plaintiffs out of the possession of said premises.

To the finding of each of the foregoing conclusions of law the defendants and each of them object and except.

JOHN GUTHRIE, *Judge.*

Filed Jan. 11th, 1887.

W. E. STERNE,
Clerk Dist. Court.

637 It is therefore by the court considered, ordered, and adjudged that said George W. Tourtelotte, George P. Allcutt, plaintiffs, recover of Charles Wilkins, William Willis, John Spering, Nicholas McAlpine, and James M. Mason, defendants, the said lands sued for, situated in the county of Wyandotte, in the State of Kansas, thus bounded and described, to wit:

Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees thirty (30) minutes west from another point thirty-four hundred and eighty-four and one-half (3,484½) feet north twenty-eight (28) degrees thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, and running from said beginning point south sixty-one (61) degrees thirty (30) minutes west two hundred and eighty-nine (289) feet, thence south twenty-eight (28) degrees thirty (30) minutes east one hundred and eighty (180) feet, thence north sixty-one (61) degrees thirty (30) minutes east two hundred and eighty-nine (289) feet, and thence north twenty-eight (28) degrees thirty (30) minutes west one — eighty (180) feet to the place of beginning, except a part thereof described as follows, to wit:

About twenty-five (25) feet by 54 feet on the east side of Wood street, being all that part as fenced in and occupied by Frank Rodie, and also excepting that part of said premises described as follows, to wit:

A piece of land fifty (50) feet square in the southwesterly corner thereof, occupied by Anton Honef at the commencement of this action, together with their costs of suit, taxed at $——, and hereof have execution for delivery of the possession of said lands to said plaintiffs and for the collection of costs.

638 In the District Court of Shawnee County, State of Kansas.

GEORGE W. TOURTELOTT *et al.*, Plaintiffs,
versus
WILLIAM WILKINS *et al.*, Defendants.

Motion for a New Trial.

Now come the defendants in the above-entitled action and move the court to grant a new trial herein for the following reasons, to wit:

First. Irregularity in the proceedings of the court, whereby defendants were prevented from having a fair trial.

Second. That the decision is not sustained by sufficient evidence and is contrary to law.

Third. Errors of law occurring at the trial and excepted to by the defendants at the time.

Fourth. That the findings of fact are not sustained by sufficient evidence.

JAMES M. MASON,
NATHAN CREE, AND
JOHN W. DAY,
Attorneys for Defendants.

Filed January 13th, 1887.

W. E. STERNE, *Clerk.*

639 And thereupon, on the 24th day of March, 1887, the said motion of the defendants herein for a new trial herein *coming* on for hearing, and the court, after consideration and being duly advised in the premises, doth overrule the same; to which ruling of the court the defendants at the time excepted.

And thereupon, for good cause shown, leave is given by the court to said defendants to make and serve a case in said cause for the supreme court within the term of ninety (90) days from this date.

And afterwards, to wit, on the 4th day of May, 1887, the following further proceedings were had, to wit:

"And now comes the defendants and for good cause shown move the court to extend the time to make and serve a case made for the supreme court to September 1st, 1887.

Wherefore it is by the court ordered that the time heretofore given

is hereby extended until September 1st, 1887, in which to make and serve said case."

This case made consists of volumes one and two.

Service of the foregoing case made for the supreme court by the defendants in the district court is hereby accepted from James M. Mason, attorney for the defendants in the district court, by Jefferson Brumback, attorney for the plaintiffs in the district court, this 29th day of August, A. D. 1887, and it is hereby agreed between the parties to the action that said plaintiffs in the district court or their attorneys may suggest amendments to such case made and present same to defendants in the district court or their attorneys on or before September 20th, A. D. 1887, without any order of the court or judge extending the time therefor.

Aug. 29th, 1887.

JEFFERSON BRUMBACK,
Attorney for Plaintiffs in District Court.
JAMES M. MASON,
Attorney for Defendants in District Court.

640 I, John Guthrie, judge of the third judicial district of the State of Kansas, do hereby certify that the foregoing case, consisting of two volumes, from pages 1 to 885, inclusive, made for the supreme court, contains all the pleadings, proceedings, evidence, orders, judgements, findings, decrees, and entries made in said cause as completely and fully as the same appeared on the trial thereof before me; that the case so made was served upon the parties plaintiff within the time allowed by me, and amendments as suggested so far as proper allowed; and now, in the presence of the parties plaintiff and defendant and their respective counsel, I do hereby settle this as a true and correct case made for the supreme court, and do hereby direct the clerk to attest the same under his seal and deliver the same to the counsel of parties defendant for filing in the supreme court.

[SEAL.] JOHN GUTHRIE, *Judge.*

Attest: W. E. STERNE.
Clerk of the District Court, 3rd Judicial District.

Filed Sept. 20th, 1887.

W. E. STERNE, *Clerk.*

641 And also on the 5th day of November, 1887, there was filed in the office of the clerk of the supreme court of the State of Kansas a waiver of the issuance and service of a summons in error in the above-entitled cause, which is in words and figures as follows, to wit:

In the Supreme Court of the State of Kansas.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERRING, NICHOLAS McALPINE, and JAMES M. MASON, Plaintiffs in Error,
vs.
GEORGE W. TOURTELLOTT and GEORGE P. ALCUTT, Defendants in Error.

The above-named defendants in error hereby waive the issuance and service of summons in the above-entitled cause.

October 29th, 1887.

CHARLES W. BLAIR,
JEFFERSON BRUMBACK,
Attorneys for Tourtellott and Alcutt.

Endorsed: In the supreme court of the State of Kansas. Charles Wilkins *et al. vs.* George W. Tourtellott *et al.* Waiver of summons. Filed November 5th, 1887. C. J. Brown, clerk supreme court.

642 And afterwards, on the 7th day of March, 1889, the same being one of the regular judicial days of the January term, 1889, of the supreme court of the State of Kansas, before said court, in session at the supreme court room, in the city of Topeka—present, Honorable Albert H. Horton, chief justice; Honorable Daniel M. Valentine and Honorable William A. Johnston, associate justices, and C. J. Brown, clerk of said court—the following proceeding, among others, was had and entered of record as follows, to wit:

CHARLES WILKINS *et al.*, Plaintiffs in Error,
vs.
GEO. W. TOURTELLOTT *et al.*, Defendants in Error. } No. 4808.

This cause comes on to be heard on the petition in error and the transcript of the record of the district court of Shawnee county; and thereupon, after oral argument by J. M. Mason and John W. Day, attorneys for plaintiffs in error, and by J. Brumback, attorney for defendants in error, the said cause is submitted on brief of counsel for both parties herein and taken under advisement by the court. The defendant in error *is* given 10 days from this date within which to serve and file additional brief.

643 And also on, to wit, the 5th day of July, 1889, the same being one of the regular judicial days of the July term, 1889, of the supreme court of the State of Kansas, before said court, in session at the supreme court room, in the city of Topeka—present, Honorable Albert H. Horton, chief justice; Honorable Daniel M. Valentine and Honorable William A. Johnston, associate justices, and C. J. Brown, clerk of said court—the following proceeding, among others, was had and entered of record as follows, to wit:

CHARLES WILKINS, WILLIAM WILLIS, JAMES M. MASON. JOHN SPERRING, and NICHOLAS MCALPINE, Plaintiffs in Error,
vs.
GEORGE W. TOURTELLOTT and GEORGE P. ALCUTT, Defendants in Error.

This cause comes on for decision, and thereupon it is ordered and adjudged that the judgment of the court below be affirmed. It is further ordered that the plaintiffs in error pay the costs of this case in this court, taxed at $—, and hereof let execution issue.

644 And also on, to wit, the 5th day of July, 1889, the same being one of the regular judicial days of the July term, 1889, of the supreme court of the State of Kansas, there was filed in the office of the clerk of said court the syllabus and opinion of the court in said cause, which is in words and figures as follows, to wit:

644½ CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERRING, NICHOLAS MCALPINE, and JAMES M. MASON
vs.
GEORGE W. TOURTELLOT and GEORGE P. ALLCUTT. } No. 4808.

Error from Shawnee county. Affirmed.

Syllabus by the Court. Horton, C. J.

1. Wilkins *vs.* Tourtellot, 28 Kas., 825, and Wilkins *vs.* Tourtellot, 29 Kas., 513, followed.
2. Collateral attacks upon judicial proceedings are never favored. Irregularities alone are not sufficient to destroy the validity of judicial proceedings, nor are mere omissions from the records sufficient to destroy such proceedings. It will generally be presumed, in the absence of anything to the contrary, that all that was necessary to be done with respect to any particular matter by the officer of a court was not only done, but rightly done. Head *vs.* Daniels, 38 Kas., 1.
3. Where the return of an order of attachment shows that the officer attached certain real estate, and that when he attached the same he in fact took possession thereof and left a true copy of the order of attachment, but does not state in so many words that he left a copy of the order with the occupant, or if there was no occupant in a conspicuous place on the real estate, it will be presumed that the officer did his duty when he attached the property, and therefore that the service of the order of attachment by him was properly and legally made.

All the justices concurring.

645 CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERRING, NICHOLAS MCALPINE, and JAMES M. MASON
vs.
GEORGE W. TOURTELLOT and GEORGE P. ALLCUTT. } No. 4808.

Error from Shawnee county.

Statement.

This case was commenced by George W. Tourtellot and George P. Allcutt October 23, 1879, in the district court of Wyandotte county against Charles Wilkins, Nicholas McAlpine, James M. Mason, *et al.* to recover a tract of land in Kansas City, in Wyandotte county, 289 feet long by 120 feet wide, excepting two small parcels thereof specially mentioned in the petition.

The amended petition upon which the cause was tried was as follows:

"That at the time of the filing of the original petition herein and the commencement of this action plaintiffs had and ever since have had and now have a legal estate in and were then and have since and now are entitled to the possession of the following-described real estate and property, situated in Wyandotte county, Kansas, thus bounded, to wit:

Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty minutes west from another point thirty-four hundred and eighty-four and one-half (3,484½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, and running thence from said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees and thirty
646 (30) minutes east one hundred and eighty (180) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and thirty (30) minutes west one hundred and eighty (180) feet to the place of beginning, except a part thereof described as follows, to wit:

About twenty-five (25) feet by fifty-four (54) feet on the east side of Wood street, being all that is fenced in and occupied by Frank Rodie, and also excepting that part of said premises described as follows, to wit:

A piece of land fifty (50) feet square in the southwesternly corner thereof, occupied by Anton Hoenf at the commencement of this action.

That defendants at the filing of the original petition and the commencement of this action unlawfully kept, and are ever since keeping unlawfully and still unlawfully keep, plaintiffs out of the possession of said premises and real property, in which plaintiffs had and still have a legal estate as aforesaid.

Plaintiffs therefore pray judgment against said defendants for the recovery of said real property and for cost of suit."

The defendants, excepting Annie Mason, filed the following answer:

"Defendants for answer admit that they are in possession of the premises described in the plaintiffs' petition and aver that they are lawfully entitled to the possession thereof and deny each and every other allegation in said petition contained."

And Annie Mason for her separate answer alleged—

647 "1st. That she is not in possession of said premises mentioned in said plaintiffs' petition under any claim in her own right, but only as a member of the family of the said defendant, James M. Mason, and under his direction and control without any voluntary act of her own; that in her own right she sets up no right, claim, or title or demand to the said premises save and except that which behooves her and is proper as the wife of the said James M. Mason, specially disclaiming any other right, title, or interest therein; that whenever the court renders a decree against the said J. M. Mason or a judgment herein for possession of said premises and he departs therefrom so she will do likewise.

2. That except as above said defendant, Annie Mason, says that she denies each and every allegation in said petition contained.

3. Said defendant further says that she denies that she is a proper party to this suit.

4. Said defendant denies that she is a necessary party thereto, and prays the court that the said action be dismissed as to her and she recover her costs in this behalf expended of and from the said plaintiffs."

On April 22, 1880, the defendants filed the following supplemental answer:

"1. That on the 11th day of March, 1880, the defendant N. McAlpine, under whom all the above defendants derive such title and possession as they have and under whom all said other defendants claim, purchased all the right, title, and interest of Jennie M. James, Llewellen E. James, Soloman James, Virginia James, and Annie James, sole heirs and legal representatives of David E. James, deceased, in and to the property in controversy herein, which said purchase was witnessed by a deed of conveyance made by the said parties named James unto said N. McAlpine, on the date above named.

That said deed of conveyance was made after this suit was
648 commenced and was duly recorded on the date above named in the office of the register of deeds in Wyandotte county, Kansas.

That by reason of the premises the said defendant, N. McAlpine, and the defendants under him, according to their right, became vested with all the right, title, and interest of said parties named James whatever the same may be.

2. Defendants says that on the 29th day of July, 1879, they purchased of J. C. Douglass, as attorney-on-fact for I. C. Richards, the holder and owner of a tax title upon the lands in controversy herein, all the right, title, and interest of said Richards and his wife, H. S. Richards, in and to the lands in controversy herein, and obtained

from said Richards and his wife, H. S. Richards, a deed of conveyance for said lands dated as aforesaid; which said conveyance contained the name of said N. McAlpine, as grantee, and was duly executed, acknowledged, and delivered to said McAlpine.

By reason whereof all the right, title, and interest of said Charles I. Richards in and to the lands in controversy herein passed to the defendant N. McAlpine and the other defendants herein, according to their rights.

And defendants hereby give notice on the record that said conveyance will be used in evidence on the trial of this case, and the defendants will urge the titles acquired thereunder in defense of this suit."

Subsequently the plaintiffs filed the following reply:

" For reply to the further and supplemental answer of defendants filed herein April 22nd, 1880, said plaintiffs deny each and every allegation thereof, and also deny that said Jennie M. James,
649 Lewellen E. James, Solomon James, Verginia James, C. I. Richards and wife, have ever had and also that any or either of them have ever had any right, title, interest, or estate to or in the lands sued for.

Plaintiffs therefore prays judgment as prayed for in their petition."

At the December term of the district court of Wyandotte county of 1881 the case was tried to the court without a jury and judgment rendered in favor of the plaintiff for a recovery of the land sued for.

The case was taken upon error to the supreme court and the judgment reversed. 28 Kas., 825; 29 Kas., 513. Subsequently the cause was taken on change of venue to the district court of Shawnee county, and there tried in June, 1886, to the court, a jury being waived.

On January 11th, 1887, that court rendered judgment in favor of the plaintiffs and filed the following special findings of fact and of law:

First. That in 1860 David E. James was the owner of the undivided three-eighths interest in a portion *as* what is known as Armstrong's reserve No. 1, and March 5, 1860, James executed to James Gladden a title bond for an undivided ten acres of this land and described the premises as the west half of the southwest quarter of section eleven (11) and the east half of the southeast quarter of section ten (10), in township eleven (11), and being in the fork of the Kansas and Missouri rivers, in Wyandotte county.

Second. That on the same day said James Gladden in writing assigned and transferred this bond for a deed to one Henry
650 R. Seegar for the nominal consideration of $1,000, but, in fact, without any consideration, and which assignment made by the said Gladden to the said Seegar was duly executed, acknowledged, and proved by the said Gladden on March 6, 1860, and recorded in the proper register of deeds office of Wyandotte county, October 1, 1860; a copy of which bond of assignment is as follows:

Know all men by these presents that I, David E. James, of the county of Wyandotte and Territory of Kansas, do hereby bind myself, my heirs and assigns, to convey unto James Gladden, his heirs and assigns, by good and valid deed, one undivided ten acres of the west half of the southwest quarter *on* section No. 11 and of the east half of the southeast quarter of No. 10, in township No. 11, being in the forks of the Kansas and Missouri rivers, in the county — Wyandotte, K. T., and all consisting of one undivided ten (10) acres.

It is hereby covenanted and agreed that the aforesaid conveyance shall be made at any time within one year from the date of this instrument. It is also agreed and understood that said conveyance is to be made subject to and in accordance with the terms and conditions of a certain mortgage given upon said real estate by said James to one Silas Armstrong, and which is recorded in the proper office of the county of Wyandotte, K. T.

In witness whereof I have hereunto set my hand and seal this 5th day of March, A. D. 1860.

DAVID E. JAMES. [L. S.]

Know all men by these presents that the within-named James Gladden, in consideration of one thousand dollars to me in
651 hand paid by Henry R. Seegar, the receipt of which I do hereby acknowledge, have bargained, sold, assigned, and set over all my right, title, interest, claim, property, and demand whatsoever in and to the within bond unto the said Henry R. Seegar and his assigns forever.

In witness whereof I have hereunto set my hand and seal this 5th day of March, A. D. 1860.

JAMES his x mark. GLADDEN. [L. S.]

In the presence of—
LOUIS B. SCOTT.
JOSEPH E. SNYDER.

STATE OF MISSOURI, *County of Jackson,* } *ss:*

Be it remembered that on this 6th day of March, 1860, before me, John S. Hough, clerk of the Kansas City court of common pleas for Kaw township, in the county and State aforesaid, personally appeared James Gladden, who is well known to me as the person whose name is subscribed to the foregoing instrument of writing, and acknowledged the same to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Kansas, on the day and date above written.

JOHN S. HOUGH, *Clerk,*
By LEWIS B. SCOTT, *D. C.*

[L. S.]

Recorded October 1, A. D. 1860, at 5 p. m.

V. J. LANE,
Register of Deeds,
By JAMES A. CRUISE, *D. R.*

Third. That on July 27, 1864, said David E. James executed and delivered to said Snyder an alleged blank deed, so called, in which the name of the grantee and description of any property were
652 omitted, and authorized said Snyder to fill it up at such time as he might desire with six acres on the bank of the Missouri river, somewhere between the State line and the mouth of the Kansas river.

Fourth. That on January 23, 1867, Thomas Ewing, Jr., and others commenced an action in the district court of Wyandotte county against William Weer, Thomas H. Swope, David E. James, and others, defendants, among which was the said Henry R. Seegar, for the purpose of obtaining a decree of partition of these premises, thus described in the petition in said action: "All that parcel of land lying in the fork of the Missouri and Kansas rivers and between the Missouri State line and the Kansas river as lies north of Turkey creek, containing about two hundred and sixty acres, more or less;" and in this petition it was alleged that Henry R. Seegar and other defendants were joint owners of certain of these premises, but in what particular part and proportion they severally owned and were seized was to the plaintiff then unknown.

Fifth. That afterwards such proceedings were had in said action for partition in said court that there was assigned, allotted, and decreed to David E. James a tract of forty-three and one-half acres of said premises.

Sixth. That in 1868, while James was absent from this State, the said Joseph E. Snyder filled up the deed referred to in conclusion of fact number three by inserting his own name as grantee, and with a description of land by meets and bounds of six acres on the bank of the Missouri river, and filed the deed thus apparently complete for record in the office of register of deeds for Wyandotte county, which alleged deed is in words and figures following:

653 This indenture made this 27th day of July, in the year of our Lord one thousand eight hundred and sixty-four, between David E. James and Jennie M. James, his wife, of the first part and Joseph E. Snyder of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar to them in hand paid, by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, his heirs and assigns forever, commencing at a point north 28½ degrees west, 3,604½ feet from the southeast corner of section 11, township 11, range 25, in the county of Wyandotte, State of Kansas; thence south 61½ degrees west 640 feet two inches (640 ft. 2 in.); thence south twenty-eight and a half (28½) degrees east three hun-

dred feet (300); thence north sixty-one and a half degrees (61½) east eight hundred and seventy-one feet and two inches (871, 2); thence along the southwest bank of the Missouri river northward twenty-eight and one-half degrees (28½) west three hundred feet (300); thence south sixty-one and a half (61½) degrees west two hundred and thirty-one (231) feet to the place of beginning, containing six (6) acres. Together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest and demand whatsoever of the said par-
654 ties of the first part, either in law or in equity, of, in and to the above-bargained premises with the hereditaments and appurtenances:

To have and to hold the same premises above described with the appurtenances, unto the said party of the second part and to his heirs and assigns forever.

In witness whereof the party of the first part have hereunto set hands and seals the day and year first above written.

D. E. JAMES. [L. S.]
JENNIE M. JAMES. [L. S.]

Sealed and delivered in the presence of—

F. L. PARKER.
TRACY W. ROOT.

STATE OF MICHIGAN, } ss:
Washtenaw County, }

On this 2nd day of August, A. D. 1864, before me, the subscriber, clerk of the circuit court of Washtenaw county aforesaid, personally appeared David E. James and Jennie M. James, to me personally known to be the identical persons described in and who executed the within conveyance, and acknowledged the instrument to be their own voluntary act and deed; and the said Jennie M. James, on an examination apart from her said husband, having been first made acquainted with the contents of such conveyance, acknowledged that she executed the same and relinquished her dower in the real estate therein mentioned freely and without any fear or compulsion of her said husband.

[SEAL.] TRACY W. ROOT, *Clerk.*

Recorded October 23rd, 1868, at 9 a. m.
JAMES A. CRUISE,
Register of Deeds.

Seventh. That on the 12th day of April, 1869, Snyder conveyed this property back to James; a copy of which deed, with certificate of acknowledgement and record in the office of the register of deeds, is as follows:

Recorded October 1, A. D. 1860, at 5 p. m.
V. J. LANE,
Register of Deeds,
By JAMES A. CRUISE, *D. R.*

Third. That on July 27, 1864, said David E. James executed and delivered to said Snyder an alleged blank deed, so called, in which the name of the grantee and description of any property were
652 omitted, and authorized said Snyder to fill it up at such time as he might desire with six acres on the bank of the Missouri river, somewhere between the State line and the mouth of the Kansas river.

Fourth. That on January 23, 1867, Thomas Ewing, Jr., and others commenced an action in the district court of Wyandotte county against William Weer, Thomas H. Swope, David E. James, and others, defendants, among which was the said Henry R. Seegar, for the purpose of obtaining a decree of partition of these premises, thus described in the petition in said action: "All that parcel of land lying in the fork of the Missouri and Kansas rivers and between the Missouri State line and the Kansas river as lies north of Turkey creek, containing about two hundred and sixty acres, more or less;" and in this petition it was alleged that Henry R. Seegar and other defendants were joint owners of certain of these premises, but in what particular part and proportion they severally owned and were seized was to the plaintiff then unknown.

Fifth. That afterwards such proceedings were had in said action for partition in said court that there was assigned, allotted, and decreed to David E. James a tract of forty-three and one-half acres of said premises.

Sixth. That in 1868, while James was absent from this State, the said Joseph E. Snyder filled up the deed referred to in conclusion of fact number three by inserting his own name as grantee, and with a description of land by meets and bounds of six acres on the bank of the Missouri river, and filed the deed thus apparently complete for record in the office of register of deeds for Wyandotte county, which alleged deed is in words and figures following:

653 This indenture made this 27th day of July, in the year of our Lord one thousand eight hundred and sixty-four, between David E. James and Jennie M. James, his wife, of the first part and Joseph E. Snyder of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar to them in hand paid, by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, his heirs and assigns forever, commencing at a point north 28½ degrees west, 3,604½ feet from the southeast corner of section 11, township 11, range 25, in the county of Wyandotte, State of Kansas; thence south 61½ degrees west 640 feet two inches (640 ft. 2 in.); thence south twenty-eight and a half (28½) degrees east three hun-

dred feet (300); thence north sixty-one and a half degrees (61½) east eight hundred and seventy-one feet and two inches (871, 2); thence along the southwest bank of the Missouri river northward twenty-eight and one-half degrees (28½) west three hundred feet (300); thence south sixty-one and a half (61½) degrees west two hundred and thirty-one (231) feet to the place of beginning, containing six (6) acres. Together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest and demand whatsoever of the said par-
654 ties of the first part, either in law or in equity, of, in and to the above-bargained premises with the hereditaments and appurtenances:

To have and to hold the same premises above described with the appurtenances, unto the said party of the second part and to his heirs and assigns forever.

In witness whereof the party of the first part have hereunto set hands and seals the day and year first above written.

D. E. JAMES. [L. S.]
JENNIE M. JAMES. [L. S.]

Sealed and delivered in the presence of—

F. L. PARKER.
TRACY W. ROOT.

STATE OF MICHIGAN, *Washtenaw County,* } ss:

On this 2nd day of August, A. D. 1864, before me, the subscriber, clerk of the circuit court of Washtenaw county aforesaid, personally appeared David E. James and Jennie M. James, to me personally known to be the identical persons described in and who executed the within conveyance, and acknowledged the instrument to be their own voluntary act and deed; and the said Jennie M. James, on an examination apart from her said husband, having been first made acquainted with the contents of such conveyance, acknowledged that she executed the same and relinquished her dower in the real estate therein mentioned freely and without any fear or compulsion of her said husband.

[SEAL.] TRACY W. ROOT, *Clerk.*

Recorded October 23rd, 1868, at 9 a. m.

JAMES A. CRUISE,
Register of Deeds.

Seventh. That on the 12th day of April, 1869, Snyder conveyed this property back to James; a copy of which deed, with certificate of acknowledgement and record in the office of the register of deeds, is as follows:

655 [U. S. revenue stamp, 50 cts.]

This indenture, made this 12th day of April, in the year of our Lord, one thousand eight hundred and sixty-nine, between Joseph E. Snyder and Teressa Snyder, his wife, of the first part, and David E. James, party of the second part, witnesseth:

That said party of the first part, in consideration of the sum of one dollar to them duly paid, do by these presents grant and convey to the said party of the second part, his heirs and assigns, all that tract or parcel of land situate in the county of Wyandotte and State of Kansas, and described as follows, to wit:

Commencing at a point north 28½ degrees west 3,604½ feet from the southeast corner of section 11, township 11, range 25, in the county of Wyandotte and State of Kansas; thence south 61½ degrees west 640 feet two inches (640, 2); thence south 28½ degrees east 300 feet; thence north 61½ degrees east 871 feet two inches; thence along the southwest bank of the Missouri river north 28½ degrees west 300 feet; thence south 61½ degrees west 231 feet to the place of beginning, containing six acres, with the appurtenances and all the estate, title and interest of the said parties of the first part therein.

And the said Joseph E. Snyder and Teressa, his wife, do hereby covenant and agree that at the delivery hereof, they are the lawful owner- of the premises above granted, and seized of a good and indefeasable estate of inheritance therein, and that they will warrant and defend the same in the quiet and peaceable possession of said parties of the second part, their heirs and assigns forever.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year above written.

656 JOSEPH E. SNYDER. [SEAL.]
TERRESSA SNYDER. [SEAL.]

Executed and delivered in the presence of—
C. MOHR.

STATE OF MISSOURI, } ss:
County of Jackson, }

On the 14th day of April, A. D. 1869, before me, clerk of the Kansas City court of common pleas in and for said county, came Joseph E. Snyder and Teressa Snyder, his wife, who are personally known to be the same persons who executed the foregoing instrument, and duly acknowledged the execution of the same.

In testimony whereof I have hereunto subscribed my name and affixed my official seal the day and year last above written.

[SEAL.] C. H. VINCENT, *Clerk.*

Recorded July 1st, A. D. 1869, at 9 a. m.

JAMES A. CRUISE,
Register of Deeds.

Eighth. That on the 13th day of April, 1869, the said David E. James and wife executed, made, acknowledged, and delivered to

Joseph E. Snyder the following deed, which was recorded in the office of the register of deeds at the time hereinafter mentioned, to wit:

[U. S. revenue stamp, 50 cts.]

This indenture, made this 13th day of April, in the year of our Lord one thousand eight hundred and sixty-nine, between David E. James and Jennie M. James, his wife, of the first part, and Joseph E. Snyder, party of the second part, witnesseth:

That the said party of the first part, in consideration of the sum of one dollar to them paid, have sold and by these presents do grant and convey to the said party of the second part, his heirs and assigns, all that tract or parcel of land situate in the county of Wyandotte and State of Kansas, and described as follows, to wit:

(Var. 11 degrees east), beginning at the S. W. corner of a
657 tract of land conveyed by said James to one James F. Joy, and now known as railroad land, said S. W. corner being the N. W. corner of a certain parcel of land now owned by said James, thence running south 61 degrees 50 min. west (580 and $\frac{8}{10}$) five hundred and eighty and eight-tenths feet; thence south 28 degrees 10 min. east 300 feet; thence north 61 degrees 50 min. east $580\frac{8}{10}$ feet, and thence north 28 degrees and 10 min. west 300 feet to the place of beginning, and all to contain four (4) acres, the said land being in township 11, range twenty-five (25), in the above-mentioned county and State.

This conveyance is made subject to the claim of a mortgage of fifty dollars per acre given to Silas Armstrong by said James; also subject to the claim of one hundred and twenty-five dollars due to C. F. Welland, due on or before May 12, 1869, with interest at the rate of ten per cent. per annum; also taxes due now upon said above-described land amounting to $17.50, more or less, with the appurtenances, and all the estate and title and interest of the first party therein; and the said David E. James and Jennie M., his wife, do hereby covenant and agree that at the delivery hereof they are the lawful owner- of the premises above granted and seized of a good and indefeasible estate of inheritance therein, and that they will warrant and defend the same in the quiet and peac-able possession of said party of the second part, his heirs and assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year above written.

D. E. JAMES. [SEAL.]
JENNIE M. JAMES. [SEAL.]

Executed and delivered in the presence of—

GEORGE B. WOOD,
E. B. BOND, AND
G. R. PORTER,
For Mrs. James.

658 STATE OF KANSAS, } ss:
County of Wyandotte, }

On the 13th day of April, A. D. 1869, before me, a notary public within and for said county, came David E. James, to me personally known to be the same person who executed the foregoing instrument, and acknowledged duly the execution of the same.

In testimony hereof, the day and year last above written, I have hereunto subscribed my name and affixed my official seal.

All interlineations made before signing.

[SEAL.] M. B. NEWMAN,
Notary Public.

STATE OF MICHIGAN, } ss:
County of Washtenaw, }

On this 17th day of April, A. D. 1869, before me, the county clerk in and for said county, came Jennie M. James, to me personally known to be the same person who executed the foregoing instrument, and duly acknowledged the execution of the same.

In witness whereof I have hereunto subscribed my name and affixed my official seal the day and year last above written.

All interlineations made before signing.

[SEAL.] JOHN J. ROBISON, *Clerk.*

[U. S. revenue stamp, 5 cents.]

Ninth. That on December 2, 1867, the said Joseph E. Snyder filed in the United States district court for the western district of Missouri his voluntary petition in bankruptcy, and in his schedule of property filed therewith Snyder set forth that he possessed no other property than his tools and implements of trade and certain exempt articles of household furniture.

Tenth. That said Snyder was on said 2nd day of December, 1867, when he filed his voluntary petition in bankruptcy, the holder
659 and owner of the title bond described in conclusion of fact No. first and did not disclose said bond or blank, concealed the said paper from his said assignee and his creditors and all knowledge of his interest in said land, if any he had, and procured from said district court of the United States for the western district of Missouri his discharge, in 1868, without scheduling said real estate.

Eleventh. That after the said Snyder had procured his said discharge in bankruptcy from said court the said creditors of said Snyder begun proceedings in said court to set aside the discharge of said Snyder on the ground that the said Snyder had fraudulently concealed from said court, his assignee, and creditors the assets belonging to his said estate, and of which said proceedings and application to set aside his discharge in bankruptcy the said Snyder was duly notified and appeared in said court to and answered to said proceedings; that it was alleged by said creditors in said proceedings that the following lands and tenements belonged to the estate in bankruptcy of said Snyder, viz:

Beginning at a point north 28½ degrees west, distance 3,604½ feet from the southeast corner of section eleven (11), township 11 south, of range 25 east, of the 6th principal meridian, in the State of Kansas, on the northwardly line of James street extended, as shown by the plat of Kansas City, Kansas, now on file in the office of the register of deeds, Wyandotte county, Kansas, on page 9 of the Book of Plats filed on the 3rd day of May, A. D. 1869, by D. E. James and others, thence south 61½ degrees west 640 feet 2 inches; thence south 28½ degrees east three hundred feet; thence north 61½ degrees east
640 feet 2 inches to the said northwardly line of said James
660 street extended; thence north 28½ west on said northwardly line of James street three hundred feet to the beginning, containing four (4) acres, more or less; and also a piece of land described as follows: Beginning at the same point as above described, thence north 61½ degrees east to the Missouri river; thence down along said river south 28½ degrees east 300 feet; thence south 61½ degrees west 231 feet to the northwardly line of said James street extended; thence north 28½ degrees west to the beginning, containing two (2) acres, more or less.

Twelfth. That afterwards, by the consideration of said district court of the United States for the western district of Missouri, on the hearing of said proceedings, it was ordered and decreed that the said discharge in bankruptcy of the said Snyder be, and the same was, set aside by said court; and it was further ordered by said court that the assignee in said court file a complete schedule of all the property belonging to the estate of said bankrupt Snyder remaining yet undisposed of.

Thirteenth. That afterwards, on August 19th, 1871, the said assignee in bankruptcy filed a schedule of property belonging to the estate of said bankrupt, and which schedule described the following property only, viz:

No personal property found. The said bankrupt owns the following-described real estate, situated in Kansas City, Wyandotte county, Kansas, and bounded as follows:

Beginning at a point north 28½ degrees west, distance 3,604½ feet from the southeast corner of section eleven (11), township eleven, 11, south, of range twenty-five, 25, east, of the 6th principal meridian
in the State of Kansas on the northwardly line of James
661 street extended, as shown by the plat of Kansas City, Kansas, now on file in the office of the register of deeds' office in Wyandotte county, Kansas, on page 9 of the Book of Plats, filed on the 3rd day of May, 1869, by D. E. James and others; thence south 61½ degrees west 640 feet 2 inches; thence south 28½ degrees east three hundred feet; thence north 61½ degrees east 640 feet 2 inches to the said northwardly line of James street extended; thence north 28½ degrees west on said northwardly — of James street three hundred feet to the beginning, containing four (4) acres, more or less, and also a piece of land described as follows: Beginning at the same point above described, thence north 61½ degrees east to the Missouri river; thence down along said river south 28½ degrees east 300 feet; thence south 61½ degrees west 231 feet to the northwardly line of

said James street extended; thence north 28½ degrees west 300 ft. to the beginning, containing two (2) acres, more or less.

Fourteenth. That on August 24, 1871, the court made an order directing the assignee in bankruptcy to appraise said premises according to law and sell the same at public or private sale as he might desire for the best interest of the creditors.

Fifteenth. That afterwards, on October 12, 1871, the said assignee in bankruptcy reported to said court in writing that he had sold said premises to B. Judd for the sum of $5,120.

Sixteenth. That afterwards, on the 14th day of October, 1871, the said court, having been fully advised in the premises, approved and confirmed said sale and made an order directing the said assignee in bankruptcy to make and deliver to said purchaser a deed of conveyance for said premises.

662 Seventeenth. That afterwards on the 20th day of October, 1871, assignee in bankruptcy made and delivered to said Byron Judd a deed of conveyance for said premises in obedience to the said order of the said district court of the United States for the western district of the State of Missouri, and that said deed contained the following-described premises, viz:

Beginning at a point north 28½ degrees west 3,604½ feet from the southeast corner of section eleven (11), township 11 south, of range 25 east, of the 6th principal meridian, on the northwestwardly line of James streets extended, as shown by the plat of Kansas City, Kansas, on file in the register of deeds' office of said county of Wyandotte, page 9 of the Book of Plats filed on the 3rd day of May, A. D. 1869, by David E. James and others, thence south 61½ degrees west 640 feet 2 inches; thence south 28½ degrees east three hundred feet; thence north 61½ degrees east 640 feet 2 inches to the said northwestwardly line of said James street extended; thence north 28½ — west on said northwestwardly line of James street extended three hundred feet to the beginning, containing four (4) acres, more or less.

Also beginning at the same point as last above, and thence north 61½ degrees east to the Missouri river; thence down along said river south 28½ degrees east 300 feet; thence south 61½ degrees west 231 feet to the northwardly line of said James street extended; thence north 28½ degrees west 300 feet to the beginning, containing two (2) acres, more or less.

And the said deed was duly executed, acknowledged, certified, delivered, and recorded on the 27th day of October, 1871, in the

663 office of said register of deeds in Wyandotte county, Kansas, in the Book Q, pages 189, 190, and 191.

Eighteenth. That the defendant Nicholas McAlpine and the other defendants herein claim under the said Byron Judd by a regular chain of conveyance through said Byron Judd and his assignees and grantees succeeding the said bankrupt title, which is a matter of record in the register of deeds' office of Wyandotte county.

Nineteenth. That said parties, the defendants, have been in the actual possession of the land in controversy ever since the early

spring of 1874, and held such possession and had a tenant living as actual occupant on the said four-acre tract of land above described, which is located on the westernly side of James street, from the early spring of 1874 and down to the time the said Nicholas McAlpine purchased the same, in the year 1879, and said tenant was an actual occupant upon the said land at the time the attachment under which said plaintiffs claim title was issued and attempted to be levied upon the land in controversy.

Twentieth. That on May 16, 1874, Henry R. Seegar commenced an action by attachment against the said Joseph E. Snyder in the district court of Wyandotte county for the purpose of recovering the sum of $481.50, with interest at the rate of six per cent. per annum from October 18, 1873, and there was issued by the clerk of said court and directed to the sheriff of said county the following order of attachment, and said order of attachment was executed by said sheriff, as appears by said order of attachment and return of said sheriff thereon and thereto attached; which order of attachment and return of said sheriff *was* as follows:

664 In the District Court of the State of Kansas in and for the County of Wyandotte.

HENRY R. SEEGAR, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant.

The State of Kansas to the sheriff of Wyandotte county, in said State, Greeting:

You are commanded to attach and safely keep the lands, tenements, goods, chattels, rights, stocks, credits, moneys, and effects of the defendant, Joseph E. Snyder, in your county not exempt by law from being applied to the payment of the claim of the plaintiff, or so much thereof as will satisfy his claim for four hundred and eighty-one and $\frac{50}{100}$ dollars, with interest at the rate of six per cent. per annum from the 18th day of October, A. D. 1873, and fifty dollars, the probable costs of this action, and of your proceedings hereunder make due return within ten days from the date hereof.

Witness my hand and the seal of said court, affixed at my office, in the city of Wyandotte, this the 16th day of May, A. D. 1874.

G. W. BETTS, *Clerk*, [SEAL.]
Per J. W. REED, *D. C.*

STATE OF KANSAS, *County of Wyandotte*, } *ss:*

665 Received this order of attachment on the 16th day of May, A. D. 1874, at — o'clock — m., and thereupon, to wit, on the 16th day of May, A. D. 1874, at my county, I attached as the property of the within-named Joseph E. Snyder as described in the appraisement hereto attached and made a part of this return by declaring on the premises that I attached said property at the

suit of the within-named Henry R. Seegar and by taking the same into my possession, and now hold the same subject to the order of the court, and with F. W. Drought and S. Bolmer, two householders of my county, who were by me on the same day first duly sworn to make a true inventory and appraisement of all the property so attached, I made a true inventory and appraisement of all the property so attached, and which said inventory and appraisement is signed by the said householders, by myself, and is returned with this order, and on the same day I left a true copy of this order.

Fees: Service, $1.00; appraisement, $1.00; appraisers' fees, $2.00; summoning two appraisers, $1.00; mileage, —; $5.40.

E. S. W. DROUGHT, *Sheriff*,
By W. H. RYUS, *Deputy Sheriff*.

And the appraisement thereto in attachment — as follows:

In the District Court of the State of Kansas in and for the County of Wyandotte.

HENRY R. SEEGAR
vs.
JOSEPH E. SNYDER.

We, the undersigned, W. H. Ryus, under sheriff of said county of Wyandotte, with F. W. Drought and S. Bolmer, householders of said county, do hereby make a true inventory and appraisement of all the property attached by said sheriff by virtue of the order of attachment in said cause issued and now in his hands for execution as follows, to wit:

666 Lands and tenements in said county: Beginning at a point 640 feet 2 inches south 61 degrees 30 min. west from another point 3,604½ feet north 28 degrees 30 min. west from the southeast corner of section 11, township 11, of range 25, in Wyandotte county, Kansas, and running from said first-named point south 61 degrees 30 min. west along the northwest line of the land formerly belonging to David E. James 289 feet; thence south 28 degrees 30 min. east 100 feet; thence north 61 degrees 30 min. east 289 feet; thence north 28 degrees 30 min. west 100 feet to the beginning, at the sum of $433.33; also beginning at a point 640 feet 2 inches south 61 degrees 30 min. west from another point 3,504½ feet north 28 degrees 30 min. west from the southeast corner of section 11, in township 11, of range 25, in Wyandotte county, Kansas, and running from said beginning point south 61 degrees 30 min. west 289 feet; thence south 28 degrees 30 min. east 100 feet; thence north 61 degrees 30 min. east 289 feet; thence north 28 degrees 30 min. west 100 feet to the place of beginning, at the sum of $433.33.

Also beginning at a point 640 feet 2 inches south 61 degrees 30 min. west from another point 3,404½ feet north 28 degrees 30 min. west from the southeast corner of section 11, township 11, range 25,

in Wyandotte county, Kansas, and running from said beginning point south 61 degrees 30 min. west 289 feet; thence south 28 degrees 30 min. east 100 feet; thence north 61 degrees 30 min. east 289 feet; thence north 28 degrees 30 min. west 100 feet to the place of beginning, at the sum of $433.33.

16th May, 1874.

E. S. W. DROUGHT, *Sheriff*,
By W. H. RYUS, *Deputy*.
F. W. DROUGHT.
S. BOLMER.

667 Twenty-first. And that on the same day, to wit, May 16, 1876, C. F. Welland commenced an action by attachment against said Joseph E. Snyder in the district court of Wyandotte county for the purpose of recovering the sum of $250, with interest at the rate of ten per cent. per annum from the eighth day of February, 1869, and there was issued by the said clerk of said court and directed to the sheriff of said county the following order of attachment, and the said order of attachment was executed by said sheriff, as appears by said order of attachment and the return of said sheriff thereon — thereto attached; which order of attachment and return of said sheriff *was* as follows:

668 In the District Court of the State of Kansas in and for the County of Wyandotte.

C. F. WELLAND, Plaintiff,
vs.
JOSEPH E. SNYDER, Defendant.

The State of Kansas to the sheriff of Wyandotte county, in said State, Greeting:

You are hereby commanded to attach and safely keep the lands, tenements, goods, chattels, rights, stocks, credits, moneys, and effects of the defendant, Joseph E. Snyder, in your county, not exempt by law from being applied to the payment of the claim of the plaintiff, or so much thereof as will satisfy his claim for two hundred and fifty dollars, with interest at the rate of ten per cent. per annum from the 8th day of February, A. D. 1869, and fifty dollars, the probable costs of this action, and of your proceedings hereunder make due return within ten days from the date hereof.

Witness my hand and the seal of said court, affixed at my office, in the city of Wyandotte, this 16th day of May, A. D. 1874.

G. W. BETTS, *Clerk*, [SEAL.]
Per J. W. REED, *D. C.*

[Endorsed:] Appearance Docket D. No. 1735. District court, Wyandotte county. Attachment. C. F. Welland *vs.* Joseph E. Snyder. Brumback & Traber, attorneys. Filed May 25, 1874. G. W. Betts, clerk.

STATE OF KANSAS, } ss:
County of Wyandotte, }

Received this order of attachment on the 16th day of May,
669 1874, at — o'clock — m., and thereupon, to wit, on the 16th day of May, A. D. 1874, at my county, I attached as the property of the within-named defendant, Joseph E. Snyder, as described in the appraisement hereto attached and made a part of this return by declaring on the premises that I attached said property at the suit of the within-named C. F. Welland, subject to the attachment on the same day made in favor of Henry Seegar, issued from the 10th district court, Wyandotte county, Kansas, by taking the same into my possession, and now hold the same subject to the order of the court, and with F. W. Drought and S. Bolmer, two disinterested householders of my county, who were by me first on the same day duly sworn to make a true inventory and appraisement of all the property so attached, I made a true inventory and appraisement of all the property so attached, and which said inventory and appraisement is signed by the said householders and by myself and is returned with this order, and on the same day I left a true copy of this order.

Fees: Service, $1.00; appraisement, $1.00; appraisers' fees, $2.00; summoning two appraisers, $1.00; mileage, .40---- $5 40

E. S. W. DROUGHT, *Sheriff*,
By W. H. RYUS, *Deputy Sheriff*.

In the District Court in and for the State of Kansas in and for the County of Wyandotte.

C. F. WELLAND }
vs.
JOSEPH E. SNYDER. }

We, the undersigned, W. H. Ryus, under sheriff of the said county of Wyandotte, and F. W. Drought and S. Bolmer, householders of said county, do hereby make a true inventory and appraisement of all the property attached by the said sheriff by virtue of the order of attachment in said cause issued and now in his hands for execution as follows, to wit:

670 Lands and tenements in said county: Beginning at a point 640 feet 2 inches south 61 degrees 30 min. west from another point 3,604½ feet north 28 degrees 30 min. west from the southeast corner of section 11, township 11, of range 25, in Wyandotte county, Kansas, and running from said first-named point south 61 degrees 30 min. west along the northwest line of the land formerly belonging to David E. James 289 feet; thence south 28 degrees 30 min. east 100 feet; thence north 61 degrees 30 min. east 289 feet; thence north 28 degrees 30 min. west 100 feet to the beginning at the sum of $433.33; also beginning at a point 640 feet 2 inches south 61 degrees 30 min. west from another point 3,504½

feet north 28 degrees 30 min. west from the southeast corner of section 11, in township 11, of range 25, in Wyandotte county, Kansas, and running from said beginning point south 61 degrees 30 min. west 289 feet; thence south 28 degrees 30 min. east 100 feet; thence north 61 degrees 30 min. east 289 feet; thence north 28 degrees 30 min. west 100 feet to the place of beginning, at the sum of $433.33.

Also beginning at a point 640 feet 2 inches south 61 degrees 30 min. west from another point 3,404½ feet north 28 degrees 30 min. west from the southeast corner of section 11, township 11, range 25, in Wyandotte county, Kansas, and running from the said beginning point south 61 degrees 30 min. west 289 feet; thence south 28 degrees 30 min. east 100 feet; thence north 61 degrees 30 min. east 289 feet; thence north 28 degrees 30 min. west 100 feet to the place of beginning, at the sum of $433.33.

E. S. W. DROUGHT, *Sheriff*,
By W. H. RYUS, *Deputy*.
F. W. DROUGHT.
S. BOLMER.

671 Twenty-second. That Snyder was divested of his title to said land by the judicial sale upon the judgments obtained against him by said C. F. Welland and Henry R. Seegar in the said district court of Wyandotte county.

Twenty-third. That at the time of the commencement of the said actions of which the above-named judgments were obtained the defendant Joseph E. Snyder was a non-resident of the State of Kansas and jurisdiction was obtained in said actions by said proceedings in attachment thereon against the lands in controversy in this action.

Twenty-fourth. That said attachment orders, returns, and proceedings were sufficient to vest the court with jurisdiction in said actions.

Twenty-fifth. That the plaintiffs herein hold by regular legal conveyance and title acquired by purchase at said sale under said attachment proceedings.

Twenty-sixth. That the tax deeds to C. I. Richards and J. C. Douglas and the conveyances from them to defendants vests no title in the land in dispute to Nicholas McAlpine.

Twenty-seventh. That the deed from the widow and children of David E. James to the defendant McAlpine conveyed no title, because the said James in his lifetime, together with his wife, had conveyed by warranty deed to Joseph E. Snyder, under whom the plaintiffs claim.

Twenty-eighth. That in the fall of 1868 the owners of the land in said fractional sections 10 and 11, to prevent the washing away of the lands adjoining the Missouri river by the current thereof, entered into an agreement with James F. Joy, representing
672 the Hannibal and St. Joe Railroad Company, to donate lands along the river bank in consideration that said company would riprap the bank of said river with rock to preserve the lands, and accordingly David E. James and others of the owners deposited

deeds in escrow to be delivered to said James F. Joy on the completion of said riprapping, and the said railroad company entered upon the prosecution of the work.

Twenty-ninth. That after the said arrangement with Joy and company and after Snyder had obtained his discharge in bankruptcy the said Snyder, while the said James was absent from the State and was in the State of Michigan, filled in the blank deed or instrument mentioned in finding No. 3 a description of the premises therein described, and also inserted his own name as grantee, as hereinbefore stated in conclusion of fact No. 6.

Thirtieth. That afterwards said David E. James, on his return from the State of Michigan, learning that the said Joseph E. Snyder had filled in said deed his own name as grantee and the description of the land as described in said deed in conclusion of fact No. 6, expressed his dissatisfaction with the description of the property, and by mutual agreement between said David E. James and Joseph E. Snyder said Snyder and wife made and executed the deed dated April 12th and acknowledged April 14, 1869, referred to and set forth in the conclusion of fact No. 7, in exchange for the lands described in the deed mentioned in finding of fact No. 8.

Thirty-first. That said James F. Joy or the railroad company for whom he was acting complied with and carried out the agreement for riprapping the bank of the Missouri river referred to in
673 conclusion of fact No. 28 and received deeds for the lands along the bank of said river from the owners of the lands in said fractional sections Nos. 10 and 11 aforesaid.

To the findings of each of the foregoing conclusions of fact the plaintiffs and defendants each seperately object and except and still object and except.

And the court finds the following conclusions of law:

1. That the title bond made by David E. James to James Gladden and by him assigned to Henry R. Seegar and held by the said Joseph E. Snyder did not vest in the said Snyder any title, legal or equitable, in the premises described in the plaintiff's petition.

2. That the deed described in conclusion of fact No. 3 did not vest in said Snyder any title, legal or equitable, in the premises described in the plaintiff's petition.

3. That on December 2, 1867, when the said Snyder filed his petition in bankruptcy in the district court of the United States for the district of Missouri, the said Snyder was not the owner of the legal or equitable title or any estate in the premises described in the plaintiff's petition.

4. That on April 13, 1869, after the said Snyder had been adjudged a bankrupt in the court of competent jurisdiction aforesaid, Snyder acquired the legal and equitable title to the premises described in the plaintiff's petition from the said David E. James by virtue of the deed of conveyance described in conclusion of fact No. 8, and that the said premises were no part of the estate of the said Snyder at the time he was adjudged a bankrupt, and that therefore the district court of the United States for the district of Mis-
674 souri, sitting as a court of bankruptcy, had no jurisdiction to

sell or dispose of the said premises to Byron Judd, and the sale of said premises described in the deed of conveyance made by the assignee in bankruptcy to Judd conveyed no title, legal or equitable, to the said Judd or to those holding under him.

5. That by virtue of the force of the two orders of attachment issued by the clerk of the district court of Wyandotte county on the 14th day of May, 1874, in the action then commenced in said court by Henry R. Seegar against the said Joseph E. Snyder and the action of C. F. Welland against the said Snyder and the return of the sheriff of Wyandotte county of his official acts under said two writs of attachment the said court acquired and had jurisdiction of the real estate described in the plaintiff's petition and vested said title to said premises in the purchaser at the sheriff's sale held and made in pursuance of the judgments of said court, and that the plaintiffs herein hold by regular conveyance and title acquired from the purchaser at said sheriff's sale under said attachment proceedings.

6. That the plaintiffs are the owners of the legal and equitable title to the premises described in plaintiff's petition and are entitled to the possession of said premises and the defendants unlawfully keep the plaintiffs out of the possession of said premises.

The defendants excepted to the findings of fact and of law, and also excepted to the judgment rendered, and bring the case here.

675 CHARLES WILKINS, WILLIAM WILLIS, JOHN SPEERING, NICHOLAS MCALPINE, and JAMES M. MASON *vs.* GEORGE W. TOURTELLOTT and GEORGE P. ALLCUTT. } No. 4808.

Error from Shawnee county. Affirmed.

The opinion of the court was delivered by HORTON, *C. J.*:

This was an action to recover the possession of a small tract of land in Kansas City, Wyandotte county, brought by George W. Tourtellott *et al.* against Charles Wilkins *et al.*

The action was commenced October 23rd, 1879.

The case was originally tried before the district court of Wyandotte county and special findings of fact and of law made and judgment rendered in favor of the plaintiffs below.

This judgment was reversed in this court at its January term, 1883. 28 Kas., 825; 29 Kas., 513.

The opinion in 28 Kas. contains a statement of the facts of the case; therefore it is unnecessary to repeat them.

The judgment was reversed in this court solely upon the ground that the sheriff's returns on the orders of attachment were not signed by him.

This court said: "A return to be complete requires the signature of the officer authenticating the statement of facts made in it. The mere fact that a paper is filed containing a recital of certain acts, which paper is unsigned by any one, contains no evidence either

that the acts so stated were in fact done or, if done, by whom
676 they were done. Process in the nature of an order of attachment must not only be executed in a certain way but also by a certain officer, and the signature of the officer is essential to show both what was done and by whom it was done. This return in no manner discloses by whom the acts stated in it were in fact done—whether by the sheriff or the plaintiff's attorney or an entire stranger to the court or the case. Now, without the signature of an officer is it evidence that anything was in fact done? Counsel argue that because the statutes of some States explicitly require that the return be signed by the officer while ours does not the failure to attach such signature is an immaterial omission. We cannot concur with this argument, because we think the signature is inherently an essential part of the return.

Nevertheless the defect is one which is amendable. It is something which does not affect the fact of service, but simply the evidence of it, and generally amendments are permissible when they simply run to perfecting the proof of a service which was in fact made; but still the amendment is one which should be made. As the record stands, it fails to show service.

We may not presume that service was in fact made; the record should show it. The return may be amended, but until amended we cannot presume that the facts were done and by the proper officer."

Subsequently, with the consent of the district court of Wyandotte county and upon due notice, the returns on the orders of attachment were amended with the signature of the officer executing the orders.

The action was taken on a change of venue to the district court of Shawnee county and tried by the court without a jury.

That court made lengthy special findings of fact and of
677 law and rendered judgment in favor of the plaintiffs below—defendants in error.

That court also handed down an elaborate written opinion. 4 K. L. J., 376–385.

In the opinion delivered in this court in this case at its July term, 1882, Mr. Justice Brewer, speaking for the court, said:

"As to the other defect, the failure to state in so many words that the officer left with the occupant, or, if there were no occupant, in a conspicuous place on the real estate, a copy of the order, the case of Sharp *vs.* Baird, 43 Cal., 577, is an authority directly in point and holding the defect fatal. Notwithstanding this authority and the great ability of the court by which it was pronounced, we are not prepared to yield full assent to it. The return states that the officer took possession of the property. The Code, chap. 226, declares that 'from the time of the issuing of the order of attachment the court shall be deemed to have acquired jurisdiction and to have control of all subsequent proceedings under the attachment.' Now, if the attachment was properly issued and the officer in fact took possession of the property, we are inclined to think that the failure to leave with the occupant or on the place a copy of the order is a mere

irregularity and not a fatal defect. At any rate, if the officer did in fact so leave the order, the return may be so amended as to state the fact, and thus all question removed as to the regularity of the service." 28 Kas., 835.

At the January term of this court for 1883, when this case was again considered, Mr. Justice Brewer further said:

678 "The argument of counsel has caused us to doubt whether we are well advised in expressing in the opinion, as we did, a dissent from the case of Sharp *vs.* Baird, 43 Cal., 577, and therefore we desire to withdraw such expression of dissent. We shall not attempt now definitely to decide the question, inasmuch as counsel for defendants in error failed to make any argument thereon or present any further authorities. We simply leave the matter open for further consideration, if occasion shall require. As to all other matters in the opinion, we see nothing that demands any correction. We are satisfied with the conclusion reached upon the facts and law except as above indicated, and think that if upon the new trial the returns of the writs of attachment are such as to vest jurisdiction and no new facts appear the judgment should be for the plaintiffs." 29 Kas., 515.

In view of the careful consideration that the facts and the law of this case have already received at the hands of this court, and also in view of the carefully prepared opinion of the learned judge of the trial court, we deem it unnecessary to discuss at any great length the volume of testimony taken.

Counsel contend with great force and some plausibility that upon the new trial new facts were developed, and therefore that the facts are changed so as to call for new and different conclusions of law.

We have carefully read the one thousand pages of written record and find that, with the exception of the amended returns and some minor but unimportant testimony connected with the alleged bankrupt title, the case is the same now as when first presented.

679 The trial judge, in his written opinion, said: "The facts and questions of law presented and insisted upon by the parties are numerous, but the issues of fact here presented are not different from the facts as presented in the case when it was before the supreme court, and there is but one question which we now propose to examine here and we shall regard all other questions of law as settled in this case by the supreme court. A full statement of the questions which we regard as settled will be found in the report of the case in 28 Kas., *supra;* and, as the facts are the same now and the law has been applied to them, these questions are settled as the law of this case.

The question unsettled in this case arises on the returns of the sheriff endorsed on the two orders of attachment and through which the plaintiff claims title to the premises in question. Since this action was tried in the district court of Wyandotte county and heard in the supreme court the sheriff has amended his returns to these orders of attachment by affixing his signature to the same."

The plaintiffs below—defendants in error—claim title, as upon

the former hearing, under judicial sales had upon attachment proceedings against Joseph E. Snyder.

The defendants below—plaintiffs in error—claim title, as upon the former hearing, under a deed from the bankrupt court, in which Joseph E. Snyder had filed his voluntary petition in bankruptcy.

The deed from the assignee in bankruptcy was dated October 20th, 1871, and recorded October 27th of that year.

680 The attachment proceedings against Snyder were commenced May 16th, 1874.

The deed of Joseph E. Snyder for the land in dispute was not executed until April, 1869, more than a year after he filed his voluntary petition in bankruptcy.

The law of the case as to the bankrupt title is clearly stated in the report of this case in 28 *Kas.*, 825, and we are inclined to follow the law as there applied.

It is urged that the opinion heretofore delivered in relation to the bankruptcy proceedings and the title thereunder was extra-judicial.

When the case was here in 1882 the only defect apparent in the title of plaintiffs was the omission of the signature of the officer on the returns of the orders of attachment. We held that the returns might be amended, but reversed the case.

In order to direct the court below as to the law of the case, if the returns were amended as suggested, it became the duty of this court to discuss and apply the law upon the facts then presented concerning the bankruptcy proceedings and the title claimed thereby.

As the bankrupt title was prior in time to the title claimed under the attachment proceedings, it was necessary for this court to examine that title, because, if that title were valid, then there was no necessity of entering upon any consideration of the title under the attachment proceedings, so the bankruptcy proceedings were in the record, and the discussion of the title derived thereby was not wholly dictum or extra-judicial.

681 Again, it is urged that this court should follow the decision of Mr. Justice Miller in the suit of McAlpine *et al. vs.* Tourtelott *et al.*, decided in the United States circuit court on June 8th, 1885. K. L. J., vol. 1, 330.

The opinion was delivered upon the dismissal of a bill in chancery to quiet the title to this and other land.

The opinion is somewhat conflicting with the views expressed concerning the bankrupt title in 28 Kas., but the bill in that case did not disclose all the facts testified to and found by the trial court in this case, and, we believe, when this case is fully examined and considered by the United States Supreme Court the views expressed in 28 Kas. will not be dissented from by the able and distinguished justice who decided the case in the United States circuit court.

This court, however, is not bound to follow the opinion of a judge of the United States circuit court, even if that judge be a member of the Supreme Court of the United States.

The United States circuit court is a court of inferior, not of superior, jurisdiction to this court.

Upon the findings of the trial court concerning the bankrupt title, notwithstanding the opinion of Mr. Justice Miller, we perceive no good reason to change or modify the views previously expressed by this court of that title.

Among others, the following are the conclusions of the trial court that relate more specifically to the title under the bankrupt proceedings:

"3. That on December 2, 1867, when the said Snyder filed his petition in bankruptcy in the district court of the United States for the district of Missouri, the said Snyder was not the owner of the legal or equitable title or any estate in the premises de-
682 scribed in the plaintiff's petition.

"4. That on April 13, 1869, after the said Snyder had been adjudged a bankrupt in the court of competent jurisdiction aforesaid, Snyder acquired the legal and equitable title to the premises described in the plaintiff's petition from the said David E. James by virtue of the deed of conveyance described in conclusion of fact No. 8, and that the said premises were no part of the estate of the said Snyder at the time he was adjudged a bankrupt, and that therefore the district court of the United States for the district of Missouri, sitting as a court of bankruptcy, had no jurisdiction to sell or dispose of the said premises to Byron Judd, and the sale of said premises described in the deed of conveyance made be the assignee in bankruptcy to Judd conveyed no title, legal or equitable, to said Judd or to those holding under him."

It is claimed by counsel for defendants below that as they claim under a sale in bankrupt proceedings and as they purchased, as they allege, bankrupt assets, that the decision of this court upon that title can be reviewed by the Supreme Court of the United States.

In order to facilitate this result we make the express ruling that upon the facts contained in the record and the findings of the trial court the defendants below have no valid claim or title, legal, equitable, or otherwise, from the assignee in bankruptcy of Joseph E. Snyder.

If a Federal question is involved it will be ultimately decided by the Supreme Court of the United States, and if we have
683 committed any error it can easily be corrected.

This brings us to a consideration of the attachment proceedings. We may premise, before discussing these, that we are not called upon and cannot reverse or modify the attachment proceedings in the cases of Seegar *vs.* Snyder and Welland *vs.* Snyder. These cases have never been brought to this court for review or reversal.

The district court of Wyandotte county permitted the returns on the orders of attachment to be amended and the signature of the officer has been affixed thereto.

We must therefore take these returns for what they are worth.

They stand before this court exactly in the same condition as if the officer had signed the returns on the orders of attachment when he first filed them with the district clerk.

The reasons that the district court of Wyandotte county gave for not allowing further amendments are wholly unimportant at this time, and the attachment actions stand or fall upon the record and the returns as amended.

We may also in this connection remark that the attachment actions are not attacked directly, but only collaterally, and collateral attacks upon judicial proceedings are not favored.

Irregularities alone are not sufficient to destroy the validity of judicial proceedings, nor are mere omissions from the record. Head *vs.* Daniels, 38 Kas., 1.

In the case of Seegar *vs.* Snyder, one of the cases upon which the plaintiff's title rests, the return of the officer, after the statement of receipt of the order, is as follows:

684 "On the 16th day of May, 1874, at my county, I attached as the property of the within-named Joseph E. Snyder as described in the appraisement hereto attached and made part of this return by declaring on the premises that I attached said property at the suit of the within-named Henry R. Seeger and by taking the same into my possession, and now hold the same subject to the order of the court, and, with W. F. Drought and S. Bolmer, two householders of my county, who were by me on the same day first duly sworn to make a true inventory and appraisement of all of the property so attached, I made a true inventory and appraisement of all the property so attached, and which said inventory and appraisement is signed by the said householders and by myself and is returned with this order, and on the same day I left a true copy of this order."

The return in the case of Welland *vs.* Snyder is precisely the same as the foregoing except as to the name of the plaintiff and that the attachment was subject to the attachment in the case of Seeger *vs.* Snyder.

In Head *vs.* Daniels, *supra*, it was said by Mr. Justice Valentine, speaking for the court:

"In conclusion we may say that collateral attacks upon judicial proceedings are never favored, and when such attacks are made, unless it is clearly and conclusively made to appear that the court had no jurisdiction or that it transcended its jurisdiction, the proceedings will not be held to be void, but will be held to be valid. Irregularities alone are not sufficient to destroy the validity of judicial proceedings; nor are mere omissions from the rec-

685 ord. On the contrary, it will generally be presumed in the absence of anything to the contrary that all that was necessary to be done with respect to any particular matter by either the court or its officers was not only done, but rightly done."

In that case the officer did not state in his return on the order of attachment that there was no occupant of the premises, and it was claimed under secs. 198–205 of the Civil Code that thereby the proceedings were void.

Upon the presumption that an officer does his duty and in the absence of anything to the contrary that he did his duty in serving the order of attachment in that case, it was held that, although

the officer in his return omitted to state that there was no occupant upon the premises attached, the proceedings were valid.

In Dunlap *vs.* McFarland, 25 Kas., 488, it was said, among other things, that—

"It is also claimed that the sheriff did not leave with the occupant of the premises, or, if there was no occupant, then in some conspicuous place on the premises, a copy of the order of attachment. Now, it is not shown that the sheriff failed in this particular; nor does it appear that the matter was called to the attention of the court below. The motion to set aside the service did not specifically point out this objection. Under such circumstances it will be presumed that the sheriff did his duty; but even if he did not, still no harm was done nor any loss suffered on account thereof, for the defendant seems to have known that his property was attached and must have known from the return of the sheriff precisely what property was attached."

Notwithstanding the case of Sharp *vs.* Baird, 43 Cal., 577,
686 referred to in the 28th Kas. and also in the 29th Kas., the later decisions of the supreme court of California tend strongly to uphold the validity of the attachment proceedings.

In Porter *vs.* Pico, 55 Cal., 165, it was held that "a return upon an attachment (or other mesne process) that the officer duly levied the same is defective in not stating the acts done by the officer in making the service; but such a return is *prima facie* sufficient to show a due execution, though the presumption may be controverted."

In Anderson *vs.* Goff, 72 Cal., 65, it was decided: "The regularity of the levy of an attachment is sufficiently shown as against a collateral attack by the return of the attaching officer, reciting that he had duly levied the same upon all the right, title, and interest of the defendant in and to certain described real estate."

And in Davis *vs.* Baker, 72 Cal., 494, the syllabus reads as follows:

"Under section 542 of the Code of Civil Proceedure, the levy of a writ of attachment upon real property may be made by posting the attachment papers in a conspicuous place on the land if the sheriff, at the time of visiting the land for the purpose of making the levy, cannot find any one visibly occupying the property.

The return of the sheriff to the writ of attachment in question recited that the sheriff, on a specified day, 'duly levied the same upon the land thereinafter described' 'by posting a copy of the
687 writ attached to a notice, notifying the defendant that said property was attached on the premises.' On the trial the sheriff testified that the papers were posted on a building which was on the land. Held that the return was *prima facie* sufficient to support the levy, although it did not state that the papers were posted in a conspicuous place on the land."

The facts in that case were substantially as follows:

The California statute requires the sheriff in attachments to leave a copy of the writ, description of the land attached, and notice with an occupant of the property, if there be one; if not, then by

posting in a conspicuous place on the property attached. One-half of a town lot 33 feet front by 132 feet deep was attached. One Ashbrook had at the time of the levy an office on the lot in a small building 12 by 15 feet. The sheriff testified that when he went to the property there was a table and a chair or two and a light burning in the office, but he found no one in the house; that he waited a while but no one came in, and then he posted the papers on the house. The trial court on the collateral attack held the levy bad and that no title passed under the attachment.

The upper court reversed the decision and in the opinion said: "The officer is required to execute the writ without delay. Promptness is generally essential to the beneficial use of the writ at all. The sheriff would be held responsible for any lack of diligence by which loss would accrue. It is not always easy to find out who is in possession of property. In view of the promptness required it must have been intended that the occupant should be easily discoverable—in fact, some one visibly occupying the property,
688 so that when the officer visits the property for the purpose of completing the levy he can determine then by what he can see whether he shall serve the copies by leaving with an occupant or by posting." "If the word 'occupant' means simply one in the actual possession of the land there would be a large amount of such property not declared to be exempt, and yet which could not be levied upon. One may be in the actual possession and yet not be in the county or State, and there might be no other occupant. In such case there could be no levy if the position of respondent be correct. One fearing an attachment would have but to lock up his place and go out of the county to be beyond the reach of the writ so far as his real estate is concerned, of which there was no other occupant.

The provision as to an occupant is a direction to the officer as to posting when he goes upon the land to complete his levy. If he find an occupant he must leave the copies of the papers with such occupant; but if he can find no such occupant he must post them in a conspicuous place upon the land."

Without referring to other authorities it seems to us sufficient to say that as the orders of attachment were properly issued and as the returns on the orders of attachment show that the officer attached the property, that he in fact took possession of the same and left a true copy of the orders of attachment, no fatal defects appear in the attachment proceedings.

We must presume, in the absence of anything to the contrary, that all that was necessary to be done with respect to the service of the orders of attachments by the officer was not only done, but rightly done. Head *vs.* Daniels, *supra.*

688½ Within the case of Davis *vs.* Baker, *supra*, if there was no one visibly occupying the property attached at the time of the service of the orders copies of the orders might have been left in a conspicuous place thereon. 4 K. L. J., *supra.*

The judgment of the district court will be affirmed.

All the justices concurring.

689 And also on the 29th day of July, 1889, there was filed in the office of the clerk of the supreme court of the State of Kansas a petition for a writ of error in said cause, which is in words and figures as follows, to wit:

United States of America to the honorable the chief justice of the State of Kansas:

Charles Wilkins, William Willis, John Sperring, Nicholas McAlpine, and James M. Mason respectfully show that on the 5th day of July, 1889, the supreme court of the State of Kansas rendered a final judgment against your petitioners in a certain cause wherein Charles Wilkins, William Willis, John Sperring, Nicholas McAlpine, and James M. Mason were plaintiffs in error and George W. Tourtellott and George P. Allcutt were defendants in error, affirming a judgment of the district court of Shawnee county, State of Kansas, in favor of said George W. Tourtellott and George P. Alcutt and against your petitioners for the recovery of the following-described real estate, situated and being in the county of Wyandotte and State of Kansas, to wit:

Beginning at a point six hundred and forty (640) feet two (2) inches south sixty-one (61) degrees and thirty (30) minutes west from another point thirty-four hundred and eighty-four and one-half (3,484½) feet north twenty-eight (28) degrees and thirty (30) minutes west from the southeast corner of section eleven (11), township eleven (11), range twenty-five (25), in said Wyandotte county, and running thence from said beginning point south sixty-one (61) degrees and thirty (30) minutes west two hundred and eighty-nine (289) feet; thence south twenty-eight (28) degrees thirty minutes (30) east one hundred and eighty (180) feet; thence north sixty-one (61) degrees and thirty (30) minutes east two hundred and eighty-nine (289) feet; thence north twenty-eight (28) degrees and
690 thirty (30) minutes west one hundred and eighty (180) feet to the place of beginning, except a part thereof described as follows, to wit:

About twenty-five (25) feet by fifty-four feet on the east side of Wood street, being all that is fenced in and occupied by Frank Rodie, and also excepting that part of said premises described as follows, to wit:

A piece of land fifty (50) feet square in the southwesterly corner thereof, occupied by Anton Hoenf at the commencement of this action, which is more particularly set forth in the decision and opinion of said court attached to the record herein, hereby refer-ed to and made a part hereof.

Comes now the said plaintiffs in error, by James M. Mason and John W. Day, their attorneys, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit:

That by the record aforesaid it appears that the judgment and decision aforesaid was given for the said defendants in error against the said plaintiffs in error, whereas, by the law of the land, the said judgment ought to have been given for the said plaintiffs in error against the said defendants in error.

That said supreme court of the State of Kansas is the highest court of said State in which a decision in said suit could be had.

And your petitioners claim the right to remove said judgment and proceedings to the Supreme Court of the United States by writ of error, under section 709 of the Revised Statutes of the United States, because the title of the plaintiffs to the above-described land and their claim of title thereto was acquired and derived under an act of Congress of the United States of America, to wit:

"An act entitled An act to establish a uniform system of bankruptcy throughout the United States," approved March 21, 1867, and by virtue of which the lands above described were sold
691 at judicial sale, under said proceedings in bankruptcy, as the assets in bankruptcy of one Joseph E. Snyder, adjudged a bankrupt under said proceedings, and were purchased at said judicial sale by the grantors of the plaintiffs in error herein, as more fully appears by the transcript of said bankruptcy proceedings in the record herein and the assignee's deed, made in pursuance thereof, which are hereby specially refer-ed to and made a part of this petition, and because the said bankruptcy title was prior in time and superior in right to the pretended title of the defendants in error claimed under subsequent attachment proceedings mentioned and described in the record herein.

And the decision of said State court was directly against the validity of the said bankrupt title, under which plaintiffs in error claim title to said premises, and directly in favor of said attachment title, under which defendants in error claim, and which title the plaintiffs in error aver is void, both in law and equity.

Wherefore your petitioners pray the allowance of a writ of error returnable into the Supreme Court of the United States, and for citation.

And your petitioners will ever pray.

CHARLES WILKINS,
WILLIAM WILLIS,
JOHN SPERRING,
NICHOLAS McALPINE,
JAMES M. MASON,
By JAMES M. MASON AND
JOHN W. DAY,
Their Attorneys.

Let the writ of error issue as prayed for in the petition of Charles Wilkins, William Willis, John Sperring, Nicholas McAlpine, and James M. Mason on their entering into an undertaking in the sum of five thousand dollars, conditioned as by law in such case made and provided.

ALBERT H. HORTON,
Chief Justice of the Supreme Court of the State of Kansas.

692 And also on, to wit, the 29th day of July, 1889, there was filed in the office of the clerk of the supreme court of the State of Kansas an appeal bond in the above-entitled cause; which said bond is in the words and figures as follows, to wit:

In the Supreme Court of the United States.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERRING, NICHOLAS McALPINE, and JAMES M. MASON, Plaintiffs in Error,
vs.
GEORGE W. TOURTELLOTT and GEORGE P. ALLCUTT, Defendants in Error.

Bond on Appeal.

Know all men by these presents that we, Charles Wilkins, William Willis, John Sperring, Nicholas McAlpine, and James M. Mason, as principals, and M. W. McAlpine, Joe Martin, and John Arthur, as sureties, are held and firmly bound unto said George W. Tourtellott and George P. Allcutt in the full and just sum of five thousand ($5,000) dollars, to be paid to the said George W. Tourtellott and George P. Allcutt, their certain attorneys, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 15th day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a trial in a suit depending in the supreme court of the State of Kansas between said plaintiffs above named and said defendants above named, the decision and judgment was rendered against the said plaintiffs in error, and in which proceedings a Federal question was involved, in this, to wit, that the said plaintiffs in error claimed title to the lands in question herein under and by virtue of an act of Congress under the bankrupt law of the United States and their title grew out of what was claimed to be assets of the bankrupt, Joseph E. Snyder, therein, and the
693 decision of the said State court and the district court below was directly against the validity of said title;

And the said plaintiffs in error having obtained a copy of such decision with the opinion of said court and a full transcript of the record therein, duly certified by said clerk of the highest court of the State wherein said record could be found, and said plaintiffs in error have prosecuted and desire to prosecute a writ of error to the Supreme Court of the United States to reverse the judgment and decision aforesaid, and a citation having been issued, directed to the said defendants in error, citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington the 2nd Monday of October, 1889:

Now, the condition of this obligation is this, that if the said plaintiffs in error shall prosecute their appeal or writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

Attest:

NICHOLAS McALPINE. [L. S.]
M. W. McALPINE. [L. S.]
JOE MARTIN. [L. S.]
JOHN ARTHUR. [L. S.]

UNITED STATES OF AMERICA, *District of* ——, } *ss:*

Nicholas McAlpine and M. W. McAlpine and John Arthur, being duly sworn, depose and say and each for himself saith that he is worth six thousand — ($6,000) over and above all just debts and liabilities and exemptions.

NICHOLAS McALPINE.
M. W. McALPINE.
JOHN ARTHUR.

Sworn to this 18th day of July, 1889, before me—

D. S. YOUNG,
Notary Public.

[SEAL.]

My commission expires March 7th, 1893.

Above bond and sureties thereto duly approved.

ALBERT H. HORTON,
Chief Justice.

[Endorsed:] 4808. Charles Wilkins, William Willis, John Sperring, and Nicholas McAlpine and James M. Mason, plaintiffs in error, *vs.* George W. Tourtellott and George P. Allcutt. Bond on writ of error from highest court of State to Supreme Court of U. S. Filed July 29, 1889. C. J. Brown, clerk sup. court. James M. Mason, attorney for pl'ffs in error.

694 And also on, to wit, the 29th day of July, 1889, there was filed in the office of the clerk of the supreme court of the State of Kansas a writ of error in the above-entitled cause, which is in the words and figures as follows, to wit:

695 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Kansas, Greeting:

Because in the record and proceedings, as also in the judgment of a plea which — in the said supreme court of Kansas, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Charles Wilkins, William Willis, John Sperring, Nicholas McAlpine, and James M. Mason, plaintiffs in error, and George W. Tourtellott and George P. Alcutt, defendants in error, wherein was drawn in question the validity of the proceedings and authority exercised under the United States and the decision was against its validity, and wherein was drawn in question the validity of the title of the plaintiffs in error to certain land acquired and derived under an act of the Congress of the United States of America, to wit, "An act entitled An act to establish a uniform system of bankruptcy throughout the United States," approved March 21, 1867, and by an authority thereunder exercised under the United States and the decision

was against such validity of said title and said authority, a manifest error hath happened, to the great damage of the said Charles Wilkins, William Willis, John Sperring, Nicholas McAlpine, and James M. Mason, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Mon-
696 day of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 29th day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

[The Seal of the Circuit Court of the United States, District of Kansas, 1862.]

G. F. SHARITT,
Clerk of the Circuit Court of the United States
for the District of Kansas.

[Endorsed:] 4808. Charles Wilkins *et al.*, pl'ffs in error, *vs.* George W. Tourtellott *et al.*, def'ts in error. Writ of error. Filed Jul- 29, 1889. C. J. Brown, clerk sup. court.

697 And also on, to wit, *on* the 2nd day of August, 1889, there was filed in the office of the clerk of the supreme court of the State of Kansas a citation in the above-entitled cause, which, with the endorsements thereon, is in the words and figures as follows, to wit:

698 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To George W. Tourtellott and George P. Alcutt and their attorneys of record, Jefferson Brumback and Charles W. Blair:

You are hereby cited and admonished to be and to appear at the Supreme Court of the United States, to be holden at the city Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas in a certain action wherein Charles Wilkins, William Willis, John Sperring, Nicholas McAlpine, and James M. Mason are plaintiffs in error and George W. Tourtellott and George P. Alcutt are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned shall not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable Albert H. Horton, chief justice of the supreme court of the State of Kansas, this 29th day of July, in the year of our Lord one thousand eight hundred and eighty-nine.

ALBERT H. HORTON,
Chief Justice of the State of Kansas.

Witness my hand and official signature, at Topeka, the capitol of the State of Kansas, on the 29th day of July, A. D. 1889.

[Seal Supreme Court, State of Kansas.]

C. J. BROWN,
Clerk of the Supreme Court of the State of Kansas.

699 [Endorsed:] 4808. Charles Wilkins *et al.*, pl'ffs in error, *vs.* George W. Tourtellott *et al.*, def'ts in error. Citation. Filed Aug. 2, 1889. C. J. Brown, clerk sup. court. Original.

We hereby waive service of the within citation and enter our appearance for the defendants in error in the Supreme Court of the United States, and service of the within citation is hereby acknowledged this 31st day of July, A. D. 1889.

STATE OF KANSAS, }
County of Wyandotte, } *ss:*

On this 1st day of August, 1889, in the year of our Lord one thousand eight hundred and eighty-nine, personally appeared James M. Mason before me, the subscriber, a notary public in and for the county and State above named, and makes oath that he delivered a true copy of the within citation to Jefferson Brumback, one of the attorneys of record of George W. Tourtellott and George P. Allcutt, the within-named defendants in error.

JAMES M. MASON.

Subscribed and sworn to before me this 1st day of August, 1889.

My com. expires 25 April, 1891.

[Seal W. H. Bigger, Notary Public, Wyandotte County, Kansas.]

W. H. BIGGER,
Notary Public.

700 In the Supreme Court of the State of Kansas.

I, C. J. Brown, clerk of the supreme court of the State of Kansas, do hereby certify that the above and foregoing is a full, correct, and complete transcript of all pleadings and papers filed and of all proceedings had in the above-entitled cause as the same remain of record and on file in my office.

Seal Supreme Court, State of Kansas.

Witness my hand and the seal of the supreme court of the State of Kansas, affixed hereto at my office, in Topeka, in said State, this — day of August, A. D. 1889.

C. J. BROWN,
Clerk Supreme Court.

Endorsed on cover: Case No. 13,726. Kansas supreme court. No. 145. Charles Wilkins, William Willis, John Sperring, Nicholas McAlpine, and James M. Mason, plaintiffs in error, *vs.* George W. Tourtellott and George P. Alcutt. Filed October 11, 1889.

FILED
JAN 23 1893
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM 1892.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPEARING, NICHOLAS MCALPINE and JAMES M. MASON,
Plaintiffs in Error.
vs.
GEORGE W. TOURTELLOTT and GEORGE P. ALLCUTT,
Defendants in Error.

No. 145.

Error to Supreme Court of Kansas.

BRIEF FOR DEFENDANTS IN ERROR.

WALLACE PRATT,
JEFFERSON BRUMBACK,
Counsel for Defendants in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM 1892.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPEARING, NICHOLAS MCALPINE and JAMES M. MASON,
Plaintiffs in Error.
vs.
GEORGE W. TOURTELLOTT and GEORGE P. ALLCUTT,
Defendants in Error.

No. 145.

Error to Supreme Court of Kansas.

ABSTRACT OR STATEMENT OF THE CASE BY DEFENDANTS IN ERROR.

Tourtelott and Allcutt, defendants in error, on October 23, 1879, sued plaintiffs in error in the District Court of Wyandotte county, Kansas, to recover a rectangular tract of land in Kansas City, Kansas, in that county, 289 feet long by 180 feet wide; for exact description see post *d*, except two small parts thereof particularly described in the petition. The case was

removed by plaintiffs in error to Circuit Court of United States for District of Kansas, but was remanded at June term, 1885, the removal being after a trial in state court and judgment for defendants in error and reversal thereof in Supreme Court of Kansas, solely because sheriff's returns in attachment against Snyder were not signed, 28 Kansas R. p. 825, 29 Kansas R. 513; and was finally tried on change of venue in the District Court of Shawnee county, Kansas, in 1887. The petition contained formal allegations, according to the code of civil proceedure of Kansas, to make out a case for recovery of the land sued for against plaintiffs in error, they, by answer, admitting themselves in possession of the property and denying the title of defendants in error and their right to possession, and setting up title in themselves, the answer being denied by reply of defendants in error. The issue for trial, which was by court, a jury being waived, was as to title of the land sued for, a judgment on such issue being, under Kansas law, conclusive of the title. Annie Mason, wife of plaintiff in error, James M. Mason, was sued with him and the others, but the suit was dismissed as to her on her filing an answer that she was not in possession under any claim in her own right, but only as a member of the family of James M. Mason, and under his directions and control, without any voluntary act of her own, and disclaiming all title except under her husband's claim of title, and denying that she was a proper and necessary party, and praying that the suit be dismissed as to her.

Both parties claim under Joseph E. Snyder. The

defendants in error, plaintiff's below, at the trial proved a good record title from the United States by patent and subsequent conveyances, and through Joseph E. Snyder under proceedings in attachment in two suits, one by Seegar and one by Welland, against him, begun in the District Court of Wyandotte county, Kansas, May 16th, 1874, the state court finding that Snyder was divested of his title by such attachment suits and judicial sales therein, and that defendants in error had that title by mesne conveyances and that it was good in them. See among other things special findings of facts 20 to 25, printed record p. 706 and following. Among other documents of title put in evidence by defendants in error was a deed made April 13, 1869, by David E. James and wife to Snyder, conveying a rectangular tract of land 580 8-10 feet one way by 300 feet the other, containing four acres and including the land sued for. See among other things special finding of facts 8, printed record p. 701 and following.

December 2, 1867, before Snyder got the deed of April 13, 1869, he was, on his own petition, adjudicated bankrupt by the District Court of the United States of the western district of Missouri. See among other things, special findings of facts 9, printed record p. 703. Plaintiff's in error at the trial claimed and relied on three separate titles to the land sued for as follows:

1. Under a deed to McAlpine, one of the plaintiffs in error, by widow and heirs of said David E. James, made March 11, 1880, which title the state court held bad because David E. James in his lifetime,

with his wife, by the deed of April 13, 1869, conveyed the land to Snyder. See among other things, first branch of supplemental answer filed April 22, 1880, printed record p. 16, and special finding of facts 27, printed record page 711.

2. Under tax deeds to C. I. Richards and J. C. Douglas and conveyances by them to said McAlpine July 29, 1879, which title the state court held bad because the tax deeds were invalid. See among other things second branch of supplemental answer filed April 22, 1880, printed record page 17, and special finding of facts 26, printed record page 711.

3. Under the bankrupt proceedings initiated by petition of Snyder, December 2, 1867, to be adjudicated bankrupt, which proceedings are referred to in special findings of facts 9, 10, 11, 12 13, 14, 15, 16, and 17, printed record page 703 and following, and conclusions of law numbers 3 and 4, printed record page 712 and following, (the mistake in description of land in finding eleven (11) from the fault of plaintiffs in error, being corrected by Norman petition, printed record page 191, for facts in detail on this and law, see statement in point four (4) of brief following, p. 64)

The only questions open for decisions by this court arise on these bankrupt proceedings, and must be passed on assuming that the first and second titles claimed by plaintiffs in error in the state court were bad, as the District Court of Shawnee county, and the Supreme Court of Kansas, following the district court, held; and assuming further that the title of defendants in error claimed in the state court was good, as the District Court of Shawnee county and the

Supreme Court of Kansas, following the district court, held, unless this court, shall, on consideration of the record, conclude that the bankrupt proceedings following the filing by Snyder on December 2, 1867, of his petition to be adjudicated bankrupt made a good title superior and paramount to the title of defendants in error through and under the deed of April 13, 1869, by James and wife to Snyder, conveying the four acre tract, including the land sued for.

Plaintiffs in error cannot in this court impeach the documents of title of defendants in error, all points thereon being closed by the judgments of the state courts. They must prevail here, if at all, solely on the strength of their own title under the bankrupt proceedings. The writer understands the plaintiffs in error will in this court, as they did in the state courts, claim that the land in controversy was owned by Snyder when adjudicated bankrupt, or if he acquired the same under the deed of April 13, 1869, after he was adjudicated bankrupt, then that certain proceedings in the bankrupt court operated to divest him of title. This statement of the case is made to present the facts bearing on both theories.

The descriptions in the pleadings, in several documents of title on both sides, and in the bankrupt proceedings, are quite intricate, and without a clear idea as to the order in which various documents were made, and as to the precise land each covered, making necessary some study of courses and distances mentioned, and the true relation of the documents to each other, the land sued for may be confused with other lands to which Snyder had a title, at least in equity, when ad-

judicated bankrupt, and which his assignee sold and conveyed, the same being on all hands conceded to be part of the bankrupt estate. For this reason the following statements are necessary, though long:

a. The United States by patent, July 13, 1857, conveyed to Silas Armstrong lot 1, of fractional sectioe 10, containing 96 89-100 acres; lot 1, fractional section 11, containing 100 81-100 acres; lot 1, of fractional section 14, containing 77 acres; the N. E. fractional quarter section 15, containing 53-100 of an acre; lot 1 of fractional section 22, containing 80 7-100 acres; lot 1 of fractional section 23, containing 115 28-100 acres; all in township 11, south of range 25 east of sixth principal meridian. Printed record p. 23. These lands were in the forks of the Missouri and Kansas rivers. and made an irregular tract bounded easterly in part by the state line between Kansas and Missouri, and in part easterly and northerly by the Missouri river and westerly by the K nsas river, the southern boundary line between the Kansas river and the state line being quite short, the partition plat following at *g* showing the lands as far as material to this case. Silas Armstrong and wife in 1859 conveyed to David E. James an undivided 3 8 of the part of the lands patented north of Turkey Creek, and at other times to various parties undivided interests.

b. March 5, 1860, David E. James, by written contract without any recited consideration agreed to convey within one year to James Gladden one undivided 10 acres of the west half of the S. W. quarter of section 11, and of the east half of the S. E. quarter of section 10 in said township 11 in the forks of the Kansas and

Missouri rivers, and the same day Gladden, for the recited consideration of $1,000, assigned this contract to Henry R. Seegar. See finding of facts 2, printed record, p. 679.

c. Silas Armstrong died intestate leaving a widow and children, his heirs at law, and afterwards on January 23, 1867, a suit for partition of the lands north of Turkey Creek covered by the Armstrong patent was begun in the District Court of Wyandotte county, Kansas, the Missouri river having after the patent washed away some of the lands patented. All parties in interest in the ownership of such lands were parties to the partition as plaintiffs or defendants, Henry R. Seegar being one defendant because of his holding as assignee, the agreement of James of March 5, 1860. In the partition suit Thomas Ewing, Jr., Sarah Calhoun, Seth J. Calhoun, Martha Calhoun, Susan Parker, Elizabeth Calhoun and Mary Calhoun and James Calhoun, minors, by Sarah Calhoun, their guardian ad litem, were plaintiffs, and William Weer, Thomas H. Swope, Silas Armstrong, Winfield S. Armstrong, Tabitha N. Vedder, Catherine Sheffenburg, Caroline M. VanFossen, Maynard C. Armstrong, McIntyre Armstrong, Elizabeth Armstrong, Antoinette Armstrong, Naomi Armstrong, Zelinda Armstrong, David E. James, George B. Wood, Luther H. Wood, Henry R. Seegar, Lawrence P. Graham, the Union Pacific Railway Company, eastern division, A. B. Bartlett and Silas Armstrong, administrators of Silas Armstrong, deceased, and A. B. Bartlett, administrator of the estate of John Calhoun, deceased, were defendants. The lands sought to be

partitioned were described as all the lands lying in the forks of the Missouri and Kansas rivers, between the Missouri state line and the Kansas river and north of Turkey Creek, containing about 258 acres more or less. The Court found and declared the rights and titles of the parties in the lands, allowing nothing to Seegar, and thus barring him of all right under the ten acre agreement assigned to him, and ordered partition between the parties in interest according to the findings as to their titles, and a partition in fact was made by commissioners appointed by the court, whose report was approved by the court October 15, 1867, by final order. The lands were divided into eighteen allotments or parcels, each carefully described by metes and bounds, and each assigned to some particular party, there being also for clearness an elaborate plat, made a part of the report, showing all allotments and giving courses and distances and acreage of each, and briefly the name of the allottee, which plat makes the descriptions in the body of the report easily intelligible. Allotment 15, containing 43 53-100 acres, was assigned by this partition to David E. James, and the description of that allotment in the proceedings by metes and bounds is as follows, to-wit: Commencing N. 28½ degrees W. 2517 ¾ feet from the S. E. corner of section 11, township 11, S. range 25 E., and running thence S. 61½ degrees W. 1417 feet to the east bank of the Kansas River; thence down the same N. 42¾ degrees W. 282 feet; N. 26 ¾ degrees W. 600 feet; north 9¾ degrees west 107 feet; north 13½ degrees east 86 feet; N. 31¼ degrees E. 91 feet; thence N. 61½ degrees East .527

feet to the west bank of the Missouri river; thence down the same S. 27¾ degrees E. 393½ feet; south 43½ degrees east 435 feet and south 46¼ degrees west 287 feet; thence south 61½ degrees west 425½ feet to the beginning, and containing 43 53-100 acres, and marked on the plat of said described real estate attached to and made a part of the report as No. 15. A reduced copy of this plat, drawn to scale, is given post at *g*.

The base line in the report in partition and the plat, beginning on state line at the S. E. corner of section 11, township 11, range 25 east and running N. 28½ degrees W. through allotment 15, (which was 1086 ¾ feet wide on that line), as well as other adjoining allotments, is clearly shown on the plat and is a controlling call, not only in the partition proceedings, but in other documents hereafter referred to. The land sued for lies in allotment 15 between a line parallel with this base line and 640 feet 2 inches toward the Kansas River from such base line, and runs from such parallel line 289 feet toward that river, and is fully described in *d*, and is shown on small plat of allotment 15 below partition plat post in *g*. See as to allotment 15, partition proceedings, printed record, p. 27 and following, especially p. 34 to 56 and special findings of facts 4 and 5, printed record, p. 699 referring to the partition, the findings of fact not being as full and detailed as they might have been and perhaps without looking at partition record not giving as clear an idea respecting allotment 15 as this statement.

d. On July 27, 1864, before the partition suit,

David E. James and wife executed, acknowledged and delivered to Joseph E. Snyder a deed for the recited consideration of one dollar, blank as to name of grantee and as to land to be conveyed, and authorized Snyder to fill up the deed at such time as he might desire with a description of six acres of land on the bank of the Missouri river somewhere between the state line and the mouth of the Kansas river, and with the name of a grantee. In October, 1868, the partition having been completed in 1867, Snyder, using the base line called for in the partition as a controlling call, and knowing the exact description by metes and bounds of allotment 15, filled in an exact and correct description of six acres out of allotment 15, inserting his own name as grantee in the proper blank, and recorded the deed thus completed October 23, 1868, the description in the deed after its completion being as follows: Commencing at a point north 28½ degrees west 3604½ feet from the S. E. corner of section 11, township 11, range 25 in the county of Wyandotte, state of Kansas; thence south 61½ degrees west 640 feet 2 inches; thence south 28 ½ degrees east 300 feet; thence north 61½ degrees east 871 feet 2 inches; thence along the S. W. bank of the Missouri river northward 28½ degrees west 300 feet; thence south 61½ degrees west 231 feet to the place of beginning, containing six acres. The beginning point is on the line between allotments 15 and 16, the partition record showing that 3406½ feet from said S. E. corner of section 11 on this base line goes to the line between allotments 15 and 16.

The land sued for is in allotment 15, and adjoins

this 6 acre tract and lies between the tract and the Kansas river, and is thus described in the petition and judgment in this case:

Situated in Wyandotte county, Kansas, thus bounded, to-wit: Beginning at a point 640 feet 2 inches S. 61½ degrees W. from another point 3484½ feet N. 28½ degrees W. from S. E. corner of section 11, township 11, range 25 in said Wyandotte county, and running thence from said beginning point S. 61½ degrees W. 289 feet; thence S. 28½ degrees E. 180 feet; thence N. 61½ degrees east 289 feet and thence N. 28½ degrees W. 180 feet to point of beginning, except two small parcels particularly described, but which need not be set out here. The beginning point is 120 feet from the line between allotments 15 and 16 measured at right angles to that line.

It will be noted that the line toward Kansas river of the six acres covered by the deed of July 27, 1864, is a line 300 feet long and parallel with the base line used in partition in description of allotment 15, and is 640 feet 2 inches from that base line towards Kansas river, and that the land sued for extends from that parallel line 289 feet towards the Kansas river.

The attachment suits against Snyder by Seegar and Welland covered three parcels of land each 100 by 289 feet, making rogether one parcel 300 by 289 feet including the land sued for, defendants in error getting title through such suits. See special findings of facts 20, 21, 22, 23, 24, 25, printed record, page 706, and following.

e. December 2, 1867, after the partition and after

getting the deed of July 28, 1864, blank as to name of grantee, and description of the six acres he had authority to fill in, Joseph E. Snyder was, on his own petition, adjudicated bankrupt by the District Court of the United States for the Western District of Missouri. He scheduled no property except his tools and implements of trade, and certain exempt articles of household furniture. Samuel A. Vose was appointed and qualified as assignee March 2, 1868, a formal assignment to him of the property of the bankrupt being made by the register. The ten-acre agreement of March 5, 1860, to Gladden (ante *b*), had been assigned in 1860 to Seegar, in trust for Snyder, but the trust did not appear in the assignment, which was duly recorded. Snyder concealed from his assignee and creditors the ten-acre agreement of March , 1860, and assignment thereof to Seegar, in trust for himself, and also the deed of July 27, 1864, blank as to name of grantee, and description of the six acres it was to be made to convey, and his right to fill up the blanks. Snyder got a formal discharge in bankruptcy September 26, 1868, and the next month as before stated, *d*, he filled up and recorded the deed of July 27, 1864, to himself for six acres on the Missouri river out of allotment 15 not including the land sued for.

f. Afterwards, in 1869, Joseph E. Snyder and wife, by warranty deed dated April 12, 1869, acknowledged next day and duly recorded July 1, 1869, conveyed to David E. James the six acre tract covered by the deed of July 27, 1864, filled up in October, 1868, the description of the land in the two deeds

being identical. See special finding of facts 7, printed record, p. 700.

g. David E. James and wife, in 1869, by warranty deed dated April 13, 1869, acknowledged that day by James, and April 17, 1869, by his wife, and duly recorded February 5, 1870, conveyed to Joseph E. Snyder four acres of land in Wyandotte county, Kansas, out of allotment 15, thus described, to-wit: (var. 11 degrees east) beginning at the S. W. corner of a tract of land conveyed by said James to one James F. Joy, and now known as railroad land, said S. W. corner being the N. W. corner of a certain parcel of land now owned by said James; thence running south 61 degrees 50 minutes west 580 8-10 feet; thence south 28 degrees 10 minutes east 300 feet; thence north 61 degrees 50 minutes east 580 8-10 feet; and thence north 28 degrees and 10 minutes west 300 feet to the place of beginning, and all to contain four acres, the said land being in township 11, range 25, in the above mentioned county and state. See special finding of fact 8, printed record, page 701. It will be noted in respect to this last conveyance that the controlling call is "Beginning at the S. W. corner of the tract of land conveyed by said James to James F. Joy, and now known as railroad land, said S. W. corner being the N. W. corner of a certain parcel of land now owned by said James." The conveyance to Joy, referred to was in evidence, see printed record, page 59, though not inserted specifically in the special findings of facts by the state court, as it might well have been to explain clearly to an appellate court reading the special find-

ings the description in the deed of James and wife to Snyder, of April 13, 1869. The deed was dated and acknowledged August 24, 1868, and recorded March 20, 1869, and was made by David E. James and wife to James F. Joy, and describes the land conveyed thereby thus: Land in the City of Wyandotte, County of Wyandotte, and State of Kansas, described as follows: Beginning at a point on the bank of the Missouri river north 50 degrees 25 minutes west 413 1-2 feet; and north 59 degrees 5 minutes west 380 1-2 feet; and north 62 degrees 5 minutes west 498 5-10 feet from a point in the state line 1582¼ feet from the S. E. corner of section 11, township 11, range 25; thence south 61½ degrees west 479 71-100 feet; thence north 28½ degrees west 1086 feet; thence north 61½ degrees east 358 feet to the bank of the Missouri river; thence south 23 degrees 32 minutes east 345 34-100 feet; thence south 37 degrees 11 minutes east 279¼ feet; thence south 40 degrees 45 minutes east 476 5-10 feet feet to beginning containing 10 acres and being a part of lot on plat in partition No. 15, on file in the clerk's office of the First Judicial district of Kansas, in the County of Wyandotte in the case of Thomas Ewing, Jr., v. William Weer et al, as will more fully and at large appear by reference to the plat of said city, recorded in the Register's office in and for said county, in book of plats, page 3.

This deed conveys ten acres off the Missouri river end of allotment 15 calling for the partition plat, and for some courses of lines bounding that allotment running from river to river. Daniel O'Flaherty sur-

veyed the land with a view to the making of the deed and his plat is attached to the deed as a part thereof. There is no call for the base line used in the partition plat running from the beginning point north 28½ degrees west, but the line towards the Kansas river of the 10 acres conveyed to Joy, being line between the 10 acres conveyed to Joy and the 4 acres conveyed to Snyder by the deed of April 13, 1869, is parallel with that base line and 368 feet distant therefrom toward the Kansas river, and is center line of James street extended called for in deed of assignee Ess, mentioned hereafter, and in finding of facts 17, printed record, page 705. At one stage in this litigation, plaintiffs in error claimed that the four acre deed of April 13, 1869, was, on account of uncertainty as to the beginning point, a nullity. The writer, however, understands that this claim will not be made here. At all events the decision of the state courts was against that claim, and the point is not one which can be re-examined here.

On May 3, 1869, David E. James, McAlpine, one of plaintiffs in error, who had purchased some interest after the partition, and George B. Wood, made and recorded a plat of Kansas City, Kansas, in which they platted a part of allotment 15 and some other lands. This plat, made within thirty days after James conveyed to Snyder the four acre tract by this deed of April 13, 1869, lays down the tract which scales exactly according to the deed to Snyder in allotment 15, and the same is marked "Jos. E. Snyder" and extends from center of James street, extended 580 8-10 feet toward Kansas river. The same plat

lays down the 10 acres conveyed to Joy, called railroad land and referred to in the deed of April 13, 1869, to Snyder, and marks the same "James F. Joy", it extending from center of James street extended to Missouri river. See this plat, printed record, p. 68, the written matter on plat showing exact description of lands platted into lots, streets and alleys, and lands owned by James and others not divided into lots, etc. The proof shows the Joy 10 acres was called Railroad Land. See, among other things, special findings of fact 3 to 6, printed record p. 698 and following, and evidence of George B. Wood, printed record, p. 574 and following.

The courses in the 6 acre deed are, N. 28½ degrees W., S. 28½ degrees E., S. 61½ degrees W., and N. 61½ degrees E., while the courses in the 4 acre deed are, N. 28 degrees 10 minutes W., S. 28 degrees 10 minutes E., S. 61 degrees 50 minutes W. and N. 61 degrees 50 minutes E. The difference in the courses, 20 minutes, arises from the different magnetic hearings existing when the descriptions were made.

The 6 acre deed of July 27, 1864, to Snyder, recorded after the 10 acre to Joy of August 24, 1868, was made, but before its record, covered a part of the 10 acres, showing a record title to that part in Snyder. To remove this complication and make the records in the office of the Register of Deeds, the 10 acre deed being recorded, show a good record title in Joy for the whole of the 10 acres, and for other reasons, James and Snyder, in the spring of 1869, agreed to and did pass the two deeds of April, that

year, one by Snyder to James for the 6 acres, ante *f*., and one by James to Snyder for the 4 acres. See special findings of facts 6, 7, 8, 28, 29, 30 and 31, printed record p. 699-711 and following, and evidence of Wood, printed record p. 574 and following.

At the time these deeds were passed the 10-acre agreement of March 5, 1860, of James to Gladden, assigned to Seegar in trust for Snyder, ante *b*, had been duly recorded in the office of the Register of Deeds of Wyandotte county, in record A, page 462. James wanted to get that out of the way and did so by getting Seegar, at the instance of Snyder, to give him, James, a document endorsed on original agreement then given up, and attested by Snyder, and of the following tenor:

STATE OF MISSOURI, }
COUNTY OF JACKSON. }

In consideration of one dollar to me in hand paid, and the absolute fulfillment of the within bond by conveyance of six acres of land to Joseph E. Snyder by deed dated July 27, 1864, and recorded on the 23d October, 1868, in Liber L of Deeds, pages 135 and 136, in the office of the Register of Deeds in and for the County of Wyandotte, State of Kansas; this bond recorded in said office in Record A, page 462, is hereby canceled and discharged and absolutely fulfilled. HENRY R. SEEGAR.

Kansas City, Mo., April 28, 1869.

Witnessed by Joseph E. Snyder and R. Saxe.

This fact is not set out in the special findings of facts by the state court as it might well have been, but is in proof. See printed record p. 685. The

evidence and the findings of fact of the state court show that the 4 acre deed of April 13, 1869, to Snyder, was not made in any sense as performance of the 10 acre agreement of March 5, 1860, but that it was made pursuant to an agreement entered into after the bankruptcy of Snyder, and for a consideration arising at the time it was made. Snyder, under the 4 acre deed of April 13, 1869, then first got title, legal as well as equitable, to the land sued for, that land being in that part (about 2 acres) of the 4 acres not covered by the 6 acre deed. On the whole case defendants in error claim that this court must decide, as did the state court, that the land sued for was not owned by Snyder when he was adjudicated bankrupt, and therefore not bankrupt estate, because he got title by the deed to him of April 13, 1869, after he was adjudicated bankrupt in December, 1867.

The plat following this paragraph shows on a reduced scale a copy of the partition plat mentioned ante *f*. In lower left hand corner is a small plat of allotment 15 showing the six acres of land conveyed by the deed of July 27, 1864, James to Snyder, being the parcel A. B. C. D; the four acres of land conveyed by the deed of April 13, 1869, James to Snyder, being the parcel E. F. G. H; the 10 acres of land conveyed by the deed of August 24, 1868, James to Joy, being the parcel F. B. I. K; the line L. M. being the base line in partition proceedings running from S. E. corner of said section 11, N. 28½ degrees west 3604½ feet to line between allotments 15 and 16 in partition. The line F. G., parallel with and distant 368 feet from base line, is the center line

of James street (on plat of Kansas City, Kansas), extended, referred to in deeds of assignee Ess hereinafter mentioned, and is line between the Snyder 4 acres and Joy 10 acres.

As Joy and Snyder did not join with James and others in the plat of Kansas City, Kansas, no part of their lands was dedicated to public use as part of James street.

h. As to the claim of plaintiffs in error that though the land sued for did not belong to Snyder when adjudicated bankrupt, but was acquired by him afterward, yet by reason of proceedings in the bankrupt court he was divested of title thereto by a sale and conveyance by the assignee in bankruptcy in 1871, so that when Seegar and Welland after that attached the land as the property of Snyder, the latter had no title, and the sale and conveyance by the sheriff in the attachment suits passed nothing and therefore the defendants in error, claiming solely through the attachment proceedings, got no title, these facts should be considered. Snyder, adjudicated bankrupt December 2, 1867, Vose being assignee, got his discharge in bankruptcy September 26, 1868, and in October, 1868, filled up the deed of July 27, 1864, with six acres on the Missouri river, and recorded it October 23, 1868, and in 1869 he and his wife conveyed this land to James and received from the latter and his wife the deed of April 13, 1869, recorded February 5, 1870, for the four acres. September 8, 1858, Eugene Jaccard & Co. recovered judgment against Snyder in the Circuit Court of Jackson County, Missouri, for $3903.70, which judgment they sold on or prior to February 9, 1870, to Joseph L. Norman. On February 9, 1870, Norman, as assignee and owner of the Jaccard judgment, and in that right a creditor of Snyder, filed a petition in the bankrupt court against Snyder to cancel the discharge in bankruptcy on the ground of fraud on the part of Snyder in failing to schedule as part of his estate the six acres of land covered by the

James deed of July 27, 1864, the deed and record on the face thereof showing that Snyder owned that land when adjudicated bankrupt. The petition described the 6 acres in the terms of the deed of July 27, 1864, referred to that deed and record thereof, a certified copy of which record was filed with the petition and made a part thereof. The petition described no other land and referred to no other conveyance.

In the petition Norman "prays your Honor to set aside and annul said discharge, and that he have judgment for the amount of said claim, $3903.70, together with interest on same, and other and further orders your Honor deems expedient as your complainant ever prays." See the petition, printed record, page 191, and following.

Snyder was served with process in due form and required to answer the Norman petition, and did so, making an issue on which proofs were taken. Printed record, page 194. April 4, 1870, the court made an order entitled, In the Norman suit, as follows: "It having come to the knowledge of the court since the discharge of the bankrupt in this case, that there is property of the bankrupt, part of his estate, which has not been administered and disposed of. It is therefore ordered that Samuel A. Vose, assignee herein, be and he is hereby directed to proceed according to law to ascertain whether any such property as aforesaid exists and remains undisposed of, and proceed to dispose of the same according to law." Printed record, page 199. In this order the court evidently had in mind the six-acre deed of July 27,

1864, filed with the Norman petition. Nothing was done under this order.

January 17, 1871, Jaccard & Co., made on the record of their judgment before that sold to Norman a formal assignment of the judgment to Norman, and the latter, on the same day, made a formal assignment of the judgment to John P. Hanrion, Norman thereafter having no actual interest in the proceedings, nor any claim against Snyder. Printed record, page 212. August 3, 1871, formal proof of the claim on the judgment having been made by Hanrion, the same was allowed in his favor for $7009.10 against the bankrupt estate. Printed record page 216. The same day the suit of Norman against Snyder, evidently prosecuted by Hanrion after January 17, 1871, was taken up by the court and a decree entered annuling the discharge, but granting no other relief. Printed record, page 201. The suit thus came to an end and Snyder was out of court and nothing was ever afterwards done in the case.

February 11, 1871, Vose, assignee, resigned, and the bankrupt court then accepted his resignation and appointed Henry N. Ess assignee in his place, and ordered "That said Samuel A. Vose, former assignee herein, convey to the said assignee, Henry N. Ess, all the estate and effects of said bankrupt according to law." Printed record p. 199. Vose made no such assignment. These orders were not made in the Norman suit, but generally in the matter of the bankruptcy of Joseph E. Snyder. June 14, 1871, the bankrupt court in the matter of such bankruptcy, but not in the Norman suit, ordered generally assig-

nee Ess to file a complete schedule of all the property belonging to the bankrupt estate yet remaining undisposed of. Printed record p. 201. This order described nothing, referred to no deed and settled nothing as to title of any land. August 19, 1871, after the final decree in the Norman suit, and not in that suit, but "in the matter of Joseph E. Snyder, bankrupt," assignee Ess filed a schedule, or inventory, stating that it is "a complete description of all real estate of said bankrupt not heretofore disposed of," but referred to no deeds or documents of title, and said nothing as to when or how Snyder got title to the land described, for which see special finding 13, printed record, p. 204, schedule, printed record, p. 202. August 24, 1871, assignee Ess filed a written motion in the bankrupt court entitled: "In the matter of Joseph E. Snyder, bankrupt," by which he moves the court for an order to have the following real estate of said bankrupt appraised, described as follows, to wit," (land here described as in his inventory), the motion concluding, "said assignee prays for an order to sell said real estate to the highest bidder for cash, said sale to be on the premises, to be advertised in the Kansas City Daily Journal and the Wyandotte Gazette, (two newspapers); sale to be subject to the confirmation of this court and with such other restrictions and regulations as the court may deem for the best interest of all concerned." Printed record, p. 403.

The court the next day, without any notice to Snyder, made this order:

"In the matter of the estate of Joseph E. Snyder, bankrupt. Case 136.

Upon application of Henry N. Ess, assignee of the estate and effects of the bankrupt herein, filed on August 24, 1871, it is ordered that certain real estate belonging to the estate of said bankrupt and described in said application as follows, to-wit:

(Description same as set out findings of facts 13, printed recorn p. 704) be appraised according to law and the said assignee sell the same at public or private sale as he may deem for the best interest of the creditors, and in case said property be sold at public sale, to be advertised in the "Kansas City Daily Journal of Commerce" and the "Wyandotte Gazette."

It is further ordered that said assignee attach a copy of the city assessment of said property for the year 1870 to the appraisement thereof, and return the same to this court.

And it is further ordered that said sale be reported to this court f r its approval," printed record p. 204.

Assignee Ess, according to such order, sold to Judd one parcel for $1800 and another parcel for $3320, and the court approved the sale, and he then made a deed dated October 20, 1871, purporting to convey the lands to Judd. See special findings of facts 17, printed record, p. 705, and the deed, printed record p. 139.

The bankrupt record does not show the disposition of the proceeds of sale to Judd amounting to $5120. It is, however, clear that Norman and Lafayette Traber, who was interested with him in the purchase of the Jaccard & Co. judgment, got none of the pro-

ceeds, as they had no claim whatever against the bankrupt estate when the sale of land was ordered and made, said Hanrion having acquired the judgment from Norman January 17, 1871, and having had it allowed as a claim in his favor August 3, 1871. The order to assignee Ess to sell and following orders were formal and do not purport to divest any title out of Snyder, nor to determine anything as to title and were evidently made without hearing or considering any proof, and certainly without any notice to Snyder of the motionn of Ess to sell or the intention of the court to make an order, or any chance for him to be heard.

Two questions arise on these proceedings and the deed to Judd by assignee Ess.

First. Did the sale by assignee Ess and his deed to Judd pass any title to the land sued for, assuming that the same in terms covered the land sued for.

Second. Does the description in the deed to Judd cover the land sued for?

To present the last point clearly it is necessary to make a statement including some facts clearly established by the proof at the trial and appearing in the record, but n ɔt as fully stated in the special findings of facts by the state court as they might have been.

The deed of assignee Ess, for which see printed record p. 189, and special finding of facts 17, p. 705, described the land conveyed thus:

Beginning at a point north 28½° degrees west 3604½ feet from the southeast corner of section 11, township 11, south of range 25 east of the 6th principal meridian on the northwestwardly line of James

street, extended, as shown by the plat of Kansas City, Kansas, on file in the register of deeds office of said county of Wyandotte, p. 9 of the book of plats, filed on the 3d day of May, A. D., 1869, by David E. James and others; thence south 61½ degrees west 640 feet 2 inches; thence south 28½ degrees east three hundred feet; thence north 61½ degrees east 640 feet 2 inches to the said northwestwardly line of said James street, extended; thence north degrees 28½ ° west on said northwestwardly line of James street, extended, three hundred feet to the beginning, containing four (4) acres more or less. Also beginning at the same point as last above, and thence north 61½ degrees east to the Missouri river; thence down along said river south 28½ degrees east 300 feet; thence south 61½ degrees west 231 feet to the northwardly line of the said James street, extended; thence north 28½ degrees west 300 feet to the beginning, containing two (2) acres, more or less.

As to this description it must be noted that it begins at a point "north 28 ½ degrees west 3604½ feet from the S. E. corner of section 11" &c., being the same course and the same distance on the base line used in the partition proceedings in describing allotment 15 made to James, placing beginning point on line betweent allotment 15 and 16 at L on plat, ante *g*, that then the description says, "On the northwestwardly line of James street extended as shown by the plat of Kansas City, Kansas, on file in the register of deeds office of said county of Wyandotte, page 9 of the book of plats, filed on the 3rd day of May, A. D., 1869, by David E. James and others,"

Then follow courses and distances precisely as in the 6 acre deed of July 27th, 1864, of James and wife to Snyder, except the calls for James street extended. The call for quantity in the deed to Judd is precisely that covered by the deed of July 27, 1864, 6 acres, one parcel 4 acres and one 2 acres. If the call in the deed to Judd "the northwestwardly line of of James street, extended" be rejected as not a controlling call, and the call for "a point north 28½ degrees west 3604½ feet from the southeast corner of section 11 &c.," be taken as the controlling call, then the land covered by the deed is precisely that covered by the 6 acre deed of July 27, 1864. The call for the "northwestwardly line of Jamds street, extended," as shown on the plat of Kansas City, Kansas, of May 3, 1869, and the call for a point north 28½ degrees west 3604½ feet from the southeast corner of section 11, are repugant, and the question is, which call, or what part of either call, must be rejected in construing the deed. The repugnancy in the calls arises from the fact that James street, 80 feet wide, and that street extended, lie between the base line N. 28½ degrees W. from S. E. corner of section 11 used in the partition, and in the 6 acre deed of July 27, 1864, and in deed of assignee Ess, and the Kansas river. According to the plat of Kansas City, Kansas, the center line of James street extended, or line between the 10 acres conveyed by James to Joy and the 4 acres conveyed April 13, 1869, by James to Snyder, is 368 feet from the base line toward the Kansas river, end parallel with the base line. A calculation based on the very intricate description in the 10

acre deed to Joy will place the line between the Joy 10 acres and the Snyder 4 acres a little less than 368 feet from the base line. As, however, James, by the plat of Kansas City, Kansas, located the Joy 10 acres and the Snyder 4 acres, it is best to treat that location as correct. The base line in partition and James street are parallel. James street extended cannot be reached by running on a course N. 28½ degrees W. from S. E. corner of sec. 11. If the course be disregarded and the line 3604½ feet be located so as to make its northerly end touch James street, extended, then the distance 3604½ feet will not reach the line between allotments 15 and 16, or the line between the allotment 16 and the lands conveyed by James to Snyder. William Tweedale, a surveyor, a witness for plaintiffs in error, printed record, p 672, and following, made the calculations and testified that it would take a line 3619.39 feet long, (14.89 feet more than 3604 1-2 feet), running from S. E. corner of section 11 on a course N. 33 degrees, 41 minutes, 54 seconds, (5 degrees 11 minutes and 54 seconds more than 28 1-2 degrees) to touch the side toward the Missouri river of James street extended on the line between allotments 15 and 16; that it would take a line 3623.23 feet long, (18.73 feet more than 3604 1-2 feet), running from S. E. corner of section 11, N. 33 degrees 49 minutes, (5 degrees and 19 minutes more 28 1-2 degrees), to touch the center line of James street extended, or line between Joy 10 acres and Snyder 4 acres, on the line between allotments 15 and 16; and that it would take a line 3627 feet long, (22 1-2 feet more than 3604 1-2 feet), running from S. E.

corner of section 11 N. 34 degrees 55 minutes W. (6 degrees and 25 minutes more than 28 1-2 degrees), to touch the line towards Kansas river of James street extended on the line between allotments 15 and 16. If the course north 28 1-2 degrees west be rejected, and a line run from the southeast corner of section 11, 3604 1-2 feet to the line towards Missouri river of James street extended, or to the center line of the street extended, or to the line towards the Kansas river of the street extended, then the land covered by the deed to Judd by assigne Ess will leave out next to allotment 16 a part of what the two deeds to Snyder by James cover, and cover toward the Kansas river and on the lower side some that those two deeds do not cover, and cover more than 6 acres.

The line of the 4 acre tract conveyed by the deed of April 13, 1869, to Snyder, towards the Kansas river, is 580 8-20 feet from the center of James street, (80 feet wide) extended. No line 640 feet 2 inches from any line of James street extended at right angles to the base line used in the partition, or at right angles to James street extended, stops where this line 580 8-10 feet in deed of April 13, 1869, to Snyder stops, but goes beyond towards the Kansas river 19 1-2 feet, 59 1-2 feet, or 99 1-2 feet, depending on measuring the 640 feet 2 inches from line toward Missouri river, center line, or line toward Kansas river, of James street extended. If the distance 3604½ feet be run from S. E. corner of section 11 to some line of James street extended then the description in deed of assignee Ess to Judd will leave out next to allotment 16 a strip of land covered by the two deeds of James to Snyder

14.89 feet, or 18.73 feet or 22 1-2 feet wide, depending on northerly end of the line 3604 1-2 feet long touching the side towards the Missouri river to center line or side toward Kansas river of James street extended. For the same reason, if the call for James street extended controls, the deed by assignee, as it purports to convey lands 300 feet wide measured on base line, James street extended, or on lines parallel thereto, will cover like strips beyond and southerly of what the deeds to Snyder by James conveyed.

If the call for the line of James street extended controls, then the deed to Judd of assignee will fail to cover some land covered by the deeds of James to Snyder, and will cover some land not covered by those deeds and to which Snyder never had any pretense of title. If the call for the line of James street extended in the deed of Ess to Judd be rejected, the description in that deed will cover precisely the land conveyed by the 6 acre deed to Snyder of July 27, 1864, just the land described in the petition and suit of Norman against Snyder. The theory of the state cuurts was that under the circumstances the call for course north 28 1-2 degrees west controlled the call for the northwestwardly line of James street extended, and that the deed must be so construed as not to convey the land in controversy, but only the land covered by the 6 acre deed of July 27, 1864, A.B.C.D. on plat, ante *g*. The same reasoning applies to all orders and papers in bankrupt court prior to the deed of assignee Ess, which is as broad as respects description, as he was authorized to make it.

i. Byron Judd, by deed of July 31, 1872, conveyed

to Stephen A. Cobb and Allison B. Bartlett the land conveyed to him by assignee Ess. Printed record, p. 142. Cobb and wife and Bartlett and wife, by warranty deed of August 15, 1872, for the recited consideration of $850, conveyed to the Hannibal and St. Joseph Railroad Company all that part of the land covered by the deed of assignee Ess to Judd lying between James street extended and the Missouri river. Printed record p. 684. James F. Joy, by deed of September 25, 1872, conveyed to said railroad company the 10 acres he got from James by the deed of Augu t 24, 1868, printed record, p. 61. The action of Cobb and Bartlett, under whom plaintiffs in error derive title, should be considered in connection with actions of assignee Ess and indicates intention to claim the whole of the 6 acres covered by the deed of July 27, 1864. Here copy X below

j. The special findings of facts and conclusions of law by the State District Court, (it being unnecessary to set out the judgment thereon for defendants in error) are as follows:

The Court finds the following conclusions of fact:

First—That in 1860 David E. James was the owner of the undivided three-eights interest in a portion of what is known as Armstrong's Reserve, No. 1, and March 5, 1860, James executed to James Gladden a title bond for an undivided ten acres of this land, and described the premises as the west half of the southwest quarter of section eleven (11), and the east half of the southeast quarter of section ten (10), in township eleven (11), and being the fork

of the Kansas and Missouri rivers in Wyandotte county.

Second—That on the same day, said James Gladden, in writing, assigned and transferred this bond for a deed to one Henry R. Seegar for the nominal consideration of $1000. But in fact without any consideration, and which assignment made by said Gladden to the said Seegar was duly executed, acknowledged and proved by the said Gladden on March 6, 1860, and recorded in the proper register of deeds' office of Wyandotte county, October 1, 1860, a copy of which bond and assignment is as follows:

Know all men by these presents that I, David E. James, of the County of Wyandotte, and Territory of Kansas, do hereby bind myself, my heirs and assigns to convey unto James Gladden, his heirs and assigns, by a good and valid deed, one undivided ten acres of the west half of the southwest quarter of section No. 11 and of the east half of the southeast quarter of No. 10, in township No. 11, being in the forks of the Kansas and Missouri rivers, in the County of Wyandotte, K. T., and all consisting of one undivided ten (10) acres.

It is hereby covenanted and agreed that the aforesaid conveyance shall be made at any time within one year from the date of this instrument. It is also agreed and understood that said conveyance is to be made subject to and in accordance with the terms and conditions of a certain mortgage given upon said real estate by said James to one Silas Armstrong, and which is recorded in the proper office of the County of Wyandotte, K. T.

In witness whereof, I have hereunto set my hand and seal this 5th day of March A. D. 1860.

DAVID E. JAMES. [L. S.]

Know all men by these presents, that the within named James Gladden in consideration of one thousand dollars to me in hand paid by Henry R. Seegar, the receipt of which I do hereby acknowledge, have bargained, sold, assigned and set over all my right, title, interest, claim, property and demand, whatsoever in and to the within bond, unto the said Henry R. Seegar and his assigns forever.

In witness whereof, I have hereunto set my hand seal, this 5th day of March, A. D. 1860.

JAMES his x mark GLADDEN. [L. S.]

In the presence of:
LOUIS B. SCOTT.
JOSEPH E. SNYDER.

STATE OF MISSOURI, } ss.
COUNTY OF JACKSON. }

Be it remembered that on this 6th day of March, 1860, before me, John S. Hough, clerk of Kansas City Court of Common Pleas for Kaw township, in the county and state aforesaid, personally appeared James Gladden, who is well known to me as the person whose name is subscribed to the foregoing instrument of writing, and acknowledged the same to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Kansas on the day and date above written.

JOHN S. HOUGH, Clerk,
[L. S.] By LOUIS B. SCOTT, D. C.

Recorded October 1, A. D. 1860, at 5. P. M.
V. J. LANE, Register of Deeds.
By JAMES A. CRUISE, D. R.

Third—That on July 27, 1864, said David E. James executed and delivered to said Snyder an alleged blank deed, so called, in which the name of the grantee and description of any property were omitted, and authorized said Snyder to fill it up at such time as he might desire, with six acres on the bank of the Missouri river somewhere between the State line and the mouth of the Kansas river.

Fourth—That on January 23, 1867, Thomas Ewing, Jr., and others commenced an action in the District Court of Wyandotte County, against William Weer, Thomas H. Swope, David E. James and others, defendants, among which was the said Henry R. Seegar, for the purpose of obtaining a decree of partition of these premises, thus described in the petition in said action: "All that parcel of land ly-"ing in the fork of the Missouri and Kansas rivers "and between the Missouri state line and the Kansas "river as lies north of Turkey creek, containing "about two hundred and sixty acres more or less;" and in this petition it was alleged that Henry R. Seegar and the other defendants were joint owners of certain of these premises, but in what particular part and proportion they severally owned and were seized was to the plaintiff then unknown.

Fifth—That, afterwards, such proceedings were had in said action for partition in said court that there was assigned, allotted and decreed to David E. James a tract of forty-three and one-half acres of said premises.

Sixth—That in 1868, while James was absent from

this state, the said Joseph E Snyder filled up the deed referred to in conclusion of fact number three by inserting his own came as grantee, and with a description of land by metes and bounds of six acres on the bank of the Missouri river, and filed the deed thus apparently per ect and complete for record in the office of register of deeds for Wyandotte County, which alleged deed is in words and figures following:

This indenture, made this 27th day of July, in the year of our Lord one thousand eight hundred nnd sixty-four, between David E. James and Jennie M. James, his wife, of the first part, and Joseph E. Snyder, of the second part:

Witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowl dged, have granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, his heirs and assigns forever, commencing at a point north 28 1-2 degrees west 3604 1-2 feet from the southeast corner of section 11, township 11, range 25, in the county of Wyandotte, state of Kansas; thence south 61 1-2 degrees west 640 feet two inches (640 ft. 2 in.); thence south twenty-eight and a half (28 1-2) degrees east three hundred feet (300); thence north sixty-one and a half degrees (61 1-2) east eight hundred and seventy-one feet and two inches (871.2): thence along the southwest bank of the Missouri river northward twenty-eight and one-half degrees (28 1-2) west three hundred feet (300); thence south sixty-

one and a half (61 1-2) degrees west two hundred and thirty one (231) feet to the place of beginning, containing six (6) acres. Together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest and demand whatsoever of the said parties of the first part, either in law or in equity, of, in and to the above bargained premises with the hereditaments and appurtenances.

To have and to hold the same premises as above described, with the appurtences, unto the said party of the second part and to his heirs and assigns forever.

In witness whereof the party of the first part have hereunto set hands and seals the day and year first above written.

D. E. JAMES, [L. S.]
JENNIE M. JAMES. [L. S.]

Sealed and delivered in the presence of:

F. L. PARKER,
TRACY W. ROOT.

STATE OF MICHIGAN, } ss.
Washtenaw County. }

On this 2d of August, A. D. 1864, before me, the subscribed, clerk of the Circuit Court of Washtenaw County aforesaid, personally appeared David E. James and Jennie M. James, to me personally known to be the identical persons described in and who executed the within conveyance, and acknowledged the instrument to be their own voluntary act and deed. And the said Jennie M. James, on an examination apart from her said husband, having been first made

acquainted with the contents of such conveyance, acknowledged that she executed the same and relinquished her dower in the real estate therein mentioned freely and without any fear or compulsion of her said husband. TRACY W. ROOT,

[SEAL] Clerk.

Recorded October 23d, A. D. 1868, at 9 A. M.

JAMES A. CRUISE, Register of Deeds.

Seventh—That on the 12th day of April, 1869, Snyder conveyed this property back to James, a copy of which deed, with certificate of acknowledgment and record in the office of the register of deeds is as follows:

[U. S. REVENUE STAMP, 50 CTS.]

This indenture, made this 12th day of April, in the year of our Lord one thousand eight hundred and sixty-nine, between Joseph E. Snyder and Teressa Snyder, his wife, of the first part, and David E. James, party of the second part:

Witnesseth: That said party of the first part, in consideration of the sum of one dollar to them duly paid, do by these presents grant and convey to said party of the second part, his heirs and assigns, all that tract or parcel of land situate in the county of Wyandotte and State of Kansas, and described as follows, to-wit:

Commencing at a point north 28 1-2 degrees west 3604 1-2 feet from the southeast corner of section 11, township 11, range 25, in the county of Wyandotte and state of Kansas; thence south 61 1-2 degrees west 640 feet two inches (640.2); thence south 28 1-2 degrees east 300 feet; thence north 61 1-2 de-

grees east 871 feet two inches; thence along the southwest bank of the Missouri river north 28 1-2 degrees west 300 feet; thence south 61 1-2 degrees west 231 feet to the place of beginning, containg six (6) acres, with the appurtenances and all the estate, title and interest of the said party of the first part therein.

And the said Joseph E. Snyder and Teressa, his wife, do hereby covenant and agree that at the delivery hereof, they are the lawful owner of the premises above granted, and seized of a good and indefeasible estate of inheritance therein, and that they will warrant and defend the same in the quiet and peaceable possession of said parties of the second part, their heirs and assigns forever.

In witness whereof the said party of the first part have hereunto set their hands and seals the day and year above written.

JOSEPH E. SNYDER, [SEAL.]
TERRESSA SNYDER, [SEAL.]

Executed and delivered in the presence of:
C. MOHR.

STATE OF MISSOURI, }
County of Jackson. } ss.

On the 14th day of April, A. D. 1869, before me clerk of the Kansas City Court of Common Pleas in and for said county, came Joseph E. Snyder and Teressa Snyder, his wife, who are personally known to be the same persons who executed the foregoing instrument, and duly acknowledged the execution of the same.

In testimony whereof I have hereunto subscribed

my name and affixed my official seal the day and year last above written.

[SEAL] C. H. VINCENT, Clerk.

Recorded July 1st, A. D. 1869, at 9 A. M.

JAMES A. CRUISE, Register of Deeds.

Eighth.—That on the 13th day of April, 1869, the said David E. James and wife executed, made, acknowledged and delivered to Joseph E. Snyder the following deed which was recorded in the office of the register of deeds at the time hereinafter mentioned, to-wit:

[U. S. REVENUE STAMP, 50 CENTS].

This indenture made this 13th day of April, in the year of our Lord one thousand eight hundred and sixty nine, between David E. James and Jennie M. James, his wife, of the first part, and Joseph E. Snyder, party of the second part, Witnesseth:

That the said party of the first part in consideration of the sum of one dollar to them paid, have sold and by these presents do grant and convey to the said party of the second part, his heirs and assigns all that tract or parcel of land situate in County of Wyandotte, and State of Kansas, and described as follows, to-wit: (Var. 11 degrees east), beginning at the S. W. corner of a tract of land conveyed by said James to one James F. Joy and now known as railroad land, said S. W. corner being the N. W. corner of a certain parcel of land now owned by said James; thence running south 61 degrees 50 min. west (580 and 8-10) five hundred and eighty and eight tenths feet; thence south 28 degrees 10 min. east 300 feet; thence north 61 degrees 50 min. east 580 and

8-10 feet, and thence north 28 degrees and 10 min. west 300 feet to the place of beginning, and all to contain four (4) acres, the said land being in township 11, range twenty-five (25) in the above mentioned county and state.

This conveyance is made subject to the claim of a mortgage of fifty dollars per acre given to Silas Armstrong by said James, also subject to the claim of one hundred and twenty-five dollars due to C. F. Welland, due on or before May 12, 1869, with interest at the rate of ten per cent per annum; also taxes due now upon said above described land amounting to $17.50, more or less, with the appurtenances and all the estate and title and interest of the first party therein, and the said David E. James and Jennie M., his wife, do hereby covenant and agree that at the delivery hereof they are the lawful owner of the premises above granted and seized of a good and indefeasible estate of inheritance therein; and that they will warrant and defend the same in the quiet and peaceable possession of said party of the second part, his heirs assigns forever.

In witness whereof, said parties of the first part have hereunto set their hands and seals the day and year above written. D. E. JAMES. [SEAL]
JENNIE M. JAMES. [SEAL]

Executed and delivered in the presence of:
GEORGE B. WOOD,
E. B. BOND, and
G. R. PORTER for MRS. JAMES.

STATE OF KANSAS, }
County of Wyandotte. } ss.

On the 13th day of April, A. D. 1869, before me, a notary public within and for said county, came

David E. James, to me personally known to be the same person who executed the foregoing instrument and acknowledged duly the execution of the same.

In testimony hereof, the day and year last above written, I have hereunto subscribed my name and affixed my official seal. All interlineations made before signing. M. B. NEWMAN, [SEAL]
Notary Public.

STATE OF MICHIGAN, } ss.
County of Washtenaw. }

On this 17th day of April, A. D. 1869, before me the county clerk in and for said county, came Jennie M. James, to me personally known to be the same person who executed the foregoing instrument and duly acknowledged the execution of the same.

In witness whereof I have hereunto subscribed my name and affixed my official seal the day and year last above written. All interlineations made before signing. JOHN J. ROBISON, [SEAL]
Clerk.

[U. S. REVENUE STAMP, 5 CENTS].

Ninth—That on December 2, 1867, the said Joseph E. Snyder, filed in the United States District Court for the western district of Missouri, his voluntary petition in bankruptcy, and in his schedule of property filed therewith, Snyder set forth that he possessed no other property than his tools and implements of trade and certain exempt articles of household furniture.

Tenth—That said Snyder was, on said 2d day of December, 1867, when he filed his voluntary petition in bankruptcy, the holder and owner of the title bond described in the conclusion of fact No. first, and did

not disclose said bond or blank deed to the bankruptcy court or his assignee, and concealed the said paper from his said assignee and his creditors, and all knowledge of his interest in said land, if any he had, and procured from said District Court of the United States for the Western District of Missouri, his discharge in 1868, without scheduling said real estate.

Eleventh.—That after the said Snyder had procured his said discharge in bankruptcy from said court the said creditors of said Snyder begun proceedings in said court to set aside the discharge of said Snyder on the ground that the said Snyder had fraudulently concealed from said court, his assignee, and creditors the assets belonging to his said estate and of which said proceedings and application to set aside his discharge in bankruptcy, the said Snyder was duly notified, and appeared in said court to and answered to sa d proceedings: that it was alleged by said creditors in said proceedings, that the following lands and tenements belonged to the estate in bankruptcy of said Snyder, viz:

"Beginning at a point north 28 1-2 degrees west distance 3604 1-2 feet from the southeast corner of section eleven (11), township 11, south range 25, east of the sixth principal meridian, in the State of Kansas on the northwardly line of James street extended, as shown by the plat of Kansas City, Kansas, now on file in the office of the register of deeds in Wyandotte county, Kansas, on page 9 of the Book of Plats, filed on the 3d day of May, 1869, by D. E. James and others; thence south 61 1-2 degrees west 640 feet 2 inches; thence south 28 1-2 degrees east 300 feet;

thence north 61 1-2 degrees east 640 feet 2 inches to the said northwardly line of said James street extended; thence north 28 1-2 degrees west on said northwardly line of James street, three hundred feet to the beginning, containing four (4) acres more or less, and also a piece of land described as follows: Beginning at the same point as above described, thence north 61 1-2 degrees east to the Missouri river; thence down along said river south 28 1-2 degrees east 300 feet; thence south 61 1-2 degrees west 231 feet to the northwardly line of said James street extended; thence north 28 1-2 degrees west to the beginning, containing two (2) acres, more or less."

Twelfth—That afterwards, by the consideration of said the District Court of the United States for the Western District of Missouri, on the hearing of said proceedings it was ordered and decreed that the said discharge in bankruptcy of the said Snyder be, and the same was set aside by said court, and it was further ordered by said court that the assignee in said court file a complete schedule of all the property belonging to the estate of said bankrupt Snyder remaining yet undisposed of.

Thirteenth.—That afterwards, on August 19, 1871, the said assignee in bankruptcy filed a schedule of property belonging to the estate of said bankrupt, and which schedule described the following property only, viz:

"No personal property found. The said bankrupt owns the following-described real estate situated in Kansas City, Wyandotte County, Kansas, and bounded as follows:

"Beginning at a point north 28½ degrees west dis-

tant 3604½ feet from the southeast corner of section eleven (11), township eleven (11) south range twenty-five (25), east of the sixth principal meridian, in the State of Kansas, on the northwardly line of James street, extended, as shown by the plat of Kansas City, Kansas, now on file in the office of the register of deeds, office in Wyandotte county, Kansas, on page 9 of the Book of Plats, filed on the 3d day of May, 1869, by D. E. James *et al.*; thence south 61½ degrees west 640 feet 2 inches; thence south 28½ degrees east 300 feet; thence north 61½ degrees east 640 feet 2 inches to the said northwardly line of James street, extended; thence north 28½ degrees west on said northwardly line of James street 300 feet to the beginning, containing four (4) acres, more or less."

And also a piece of land described as follow:

"Beginning at the same point above described; thence north 61 1-2 degrees east to the Missouri river; thence down along the said river south 28 1-2 degrees east 300 feet; thence south 61 1-2 degrees west 231 feet to the northwardly line of said James street, extended; thence north 28 1-2 degrees west 300 feet to the beginning, containing two acres, more or less."

Fourteenth.—That on August 24, 1871, the Court made an order directing the assignee in bankruptcy to appraise said premises according to law and sell the same at public or private sale as he might desire for the best interest of the creditors.

Fifteenth.—That afterwards, on October 12, 1871 the said assignee in bankruptcy reported to said Court in writing that he had sold said premises to B. Judd for the sum of $5,120.

Sixteenth—That afterwards, on the 14th day of

October, 1871, the said court, having been fully advised in the premises, approved and confirmed said sale, and made an order directing the said assigneee in bankruptcy to make, and deliver to said purchaser a deed of conveyance for said premises.

Seventeenth—That afterwards, on the 20th day of October, 1871, assignee in bankruptcy made and delivered to said Byron Judd a deed of conveyance for said premises, in obedience to said order of the said district court of the United States for the Western District of the State of Missouri, and that said deed contained the following described premises, viz:

"Beginning at a point north 28 1-2 degrees west 3604 1-2 feet from the southeast corner of section 11, township 11, south of range 25, east of the 6th principal meridian on the northwestwardly line of James street, extended, as shown by the plat of Kansas City, Kansas, on file in the register of deeds' office of said county of Wyandotte, page 9 of the book of plats, filled on the 3d of May, A. D. 1869, by David E. James and others; thence south 61 1-2 degrees west 640 feet 2 inches; thence south 28 1-2 degrees east three hundred feet; thence north 61 1-2 degrees east 640 feet 2 inches to the said northwestwardly line of said James street, extended, thence north 28 1-2 degrees west on said northwestwardly line of James street, extended, three hundred feet to the beginning containing four (4) acres, more or less. Also beginning at the same point as last above, and thence north 61 1-2 degrees east to the Missouri river; thence down along said river south 28 1-2 degrees east 300 feet; thence south 61 1-2 degrees west 231 feet to the northwardly line of said James street, extended;

thence north 28 1-2 degrees west 300 feet to the beginning, containing two (2) acres, more or less."

And the said deed was duly executed, acknowledged, certified, delivered snd recorded on the 27th day of October, 1871 in the office of said register of deeds, in Wyandotte county, Kansas, in the book Q, pages 189, 190 and 191.

Eighteenth—That the defendant, Nicholas McAlpine, and the other defendants herein, claim under the said Byron Judd, by a regular chain of conveyance through said Byron Judd and his assignees and grantees, succeeding the said bankrupt title, which is a matter of record in the register of deeds' office of Wyandotte county.

Nineteenth—That said parties, the defendants, have been in the actual possession of the land in controversy ever since the early spring of 1874, and held such possession and had a tenant living as actual occupant on the said four-acre tract of land above described, which is located on the westernly side of James street, from the early spring of 1874 and down to the time the said Nicholas McAlpine purchased the same in the year 1879, and said tenant was an actual occupant upon the said land at the time the attachment under which said plaintiff's claim title was issued and attempted to be levied upon the land in controversy.

Twentieth—That on May 16, 1874, Henry R. Seegar commenced an action by attachment against the said Joseph E. Snyder in the district court of Wyandotte county, for the purpose of recovering the sum of $481.50, with interest at the rate of 6 per

per cent per annum from October 18, 1873, and there was issued by the clerk of said court and directed to the sheriff of said county the following order of attachment and said order of attachment was executed by said sheriff, as appears by said order of attachment and the return of said sheriff thereon and thereto attached, which order of attachment and the return of said sheriff was as follows:

In the District Court of the State of Kansas in and for the County of Wyandotte.

HENRY R. SEEGAR, *Plaintiff*,

vs.

JOSEPH E. SNYDER, *Defendant*.

The State of Kansas to the Sheriff of Wyandotte County, in said State, Greeting:

You are hereby commanded to attach and safely keep the lands, tenements, goods, chattels, rights, stocks, credits, moneys and effects of the defendant, Joseph E. Snyder, in your county, not exempt by law from being applied to the payment of the claim of the plaintiff, or so much thereof as will satisfy his claim for four hundred and eighty-one and 50-100 dollars, with interest at the rate of six per cent per cent per annum from the 18th day of October, A. D. 1873, and fifty dollars, the probable costs of this action. And of your proceedings hereunder make due return within ten days from the date hereof.

Witness my hand and the seal of said court affixed at my office in the city of Wyandotte, this the 16th day of May, A. D. 1874. G. W. BETTS, [SEAL]
Clerk.
Per J. W. Reed, D. C.

STATE OF KANSAS, } ss.
County of Wyandotte. }

Received this order of attachment on the 16th day of May, A. D. 1874, at o'clock M., and thereupon, to-wit: on the 16th day of May A. D. 1874, at my county, I attached as the property of the within named Joseph E. Snyder, as described in the appraisement hereto attached and made a part of this return, by declaring on the premises that I attached said property at the suit of the within named Henry R. Seegar, and by taking the same into my possession; and now hold the same subject to the order of the court. And with F. W. Drought and S. Bolmer two householders of my county, who were by me on the same day first duly sworn to make a true inventory and appraisement of all the property so attached, and which said inventory and appraisement is signed by the said householders, by myself, and is returned with this order; and on the same day I left a true copy of this order.

Fees: Service $1.00; appraisement $1.00; appraiser's fees $2 00; summoning two appraisers $1.00; mileage $5.40. E. S. W. DROUGHT,
Sheriff.
By W. H. Ryus, Deputy Sheriff.

And the appraisement thereto, in attachment, as follows:

In the District Court of the State of Kansas, in and for the County of Wyandotte.

HENRY R. SEEGAR
v.
JOSEPH E. SNYDER.

We, the undersigned. W. H. Ryus, under sheriff of said County of Wyandotte, with F. W. Drought

and S. Bolmer, householders of said County do hereby make a true inventory and appraisement of all the property attached by said sheriff, by virtue of the order of attachment in said cause issued and now in his hands for execution, as follows, to-wit:

Lands and tenements in said county: Beginning at a point 640 feet and 2 inches south 61 degrees 30 min. west from another point 3604½ feet north 28 degrees 30 min. west from the southeast corner of section 11, township 11, of range 25, in Wyandotte county, Kansas, and running from said first named point south 61 degrees 30 min. west along the northwest line of the land formerly belonging to David E. James 289 feet; thence south 28 degrees 30 min. east 100 feet; thence north 61 degrees 30 min. east 289 feet; thence north 28 degrees 30 min. west 100 feet to the beginning, at the sum of $433.33. Also beginning at a point 640 feet 2 inches south 61 degrees 30 min. west from another point 3504½ feet north 28 degrees 30 min. west from the southeast corner of section 11, in township 11, of range 25, in Wyandotte county, Kansas, and running from said beginning point south 61 degrees 30 min. west 289 feet; thence south 28 degrees 30 min. east 100 feet; thence north 61 degrees 30 min. east 289 feet; thence north 28 degrees 30 min. west 100 feet to the place of beginning at the sum of $433.33. Also beginning at a point 640 feet 2 inches south 61 degrees 30 min. west from another point 3404½ feet north 28 degrees 30 min. west from the southeast corner of section 11, township 11, range 25, in Wyandotte county, Kansas, and running from said beginning point south 61 degrees 30 min. west 289 feet; thence south 28 degrees 30 min. east 100 feet; thence north 61 degrees 30

min. east 289 feet; thence north 28 degrees 30 min. west 100 feet to the place of beginning, at the sum of $433.33.

16th May, 1874.

E. S. W. DROUGHT, Sheriff.
By W. H. RYUS, Deputy.
F. W. DROUGHT.
S. BOLMER.

Twenty first—And that on the same day, to-wit: May 16, 1874, C. F. Welland commenced an action by attachment against said Joseph E. Snyder in the District Court of Wyandotte County, for the purpose of recovering the sum of $250, with interest at the rate of ten per cent per annum from the 8th day of February, 1869, and there was issued by the said clerk of said court, and directed to the sheriff of said county, the following order of attachment; and the said order of attachment was executed by said sheriff as appears by said order of attachment and the return of said sheriff thereon, thereto attached, which order of attachment and return of said sheriff was as follows:

In the District Court of the State of Kansas, in and for the County of Wyandotte.

C. F. WELLAND, *Plaintiff*,

v.

JOSEPH E. SNYDER, *Defendant*.

The State of Kansas, to the Sheriff of Wyandotte County, in said State, Greeting:

You are hereby commanded to attach and safely keep the lands, tenements, goods, chattels, stocks, rights, credits, moneys and effects of the defendant Joseph E. Snyder, in your county, not exempt by

law from being applied to the payment of the claim of the plaintiff, or so much thereof as will satisfy his claim for two hundred and fifty dollars, with interest at the rate of ten per cent per annum from the 8th day of February, A. D. 1869, and fifty dollars, the probable cost of this action; and of your proceedings hereunder make due return within ten days from the date hereof.

Witness my hand and the seal of said court, affixed at my office in the City of Wyandotte, this 16th day of May, A. D. 1874. G. W. BETTS, [SEAL] Clerk.

Per J. W. REED, D. C.

Appearance Docket D. No. 1735. District Court Wyandotte County. Attachment.

C. F. WELLAND

v.

JOSEPH E. SNYDER.

BRUMBACK & TRABER, Attorneys.

Filed May 25, 1874. G. W. BETTS, Clerk.

STATE OF KANSAS, } ss.
County of Wyandotte. }

Received this order of attachment on the 16th day of May, 1874, at o'clock M., and thereupon, to-wit: on the 16th day of May, 1874, at my county, I attached as the property of the within named defendant, Joseph E. Snyder, as described in the appraisement hereto attached and made a part of this return, by declaring on the premises that I attached said property at the suit of the within named C. F. Welland, subject to the attachment on the same day made in favor of Henry R. Seegar, issued from the 10th District Court, Wyandotte county, Kansas, by

taking the same into my possession, and now hold the same subject to the order of the court; and with F. W. Drought and S. Bolmer, two disinterested householders of my county, who were by me first on the same day duly sworn to make a true inventory and appraisement of all the property so attached, I made a true inventory and appraisement of all the property so attached, and which said inventory and appraisement is signed by the said householders and by myself, and is returned with this order; and on the same day I left a true copy of this order.

Fees: Service, $1.00; appraisement, $1.00; appraisers' fees, $2.00; summoning 2 appraisers, $1.00; mileage, 40—$5.40. E. S. W. Drought,
Sheriff.
By W. H. Ryus, Deputy Sheriff.

In the District Court in and for the State of Kansas, and Wyandotte County.

C. F. Welland,
v.
Joseph E. Snyder.

We, the undersigned, W. H. Ryus, under sheriff of the said county of Wyandotte, with F. W. Drought and S. Bolmer, householders of said county, do hereby make a true inventory and appraisement of all the property attached by the said sheriff by virtue of the order of attachment in said cause issued and now in his hands for execution as follows, to-wit:

Lands and tenements in said county: Beginning at a point 640 feet 2 inches south 61 degrees 30 min. west from another point 3604 1-2 feet north 28 degrees 30 m n. west from the southeast corner of section 11, in township 11, of range 25, in Wyandotte

county, Kansas, and running from said first named point south 61 degrees 30 min. west along the northwest line of the land formerly belonging to David E. James, 289 feet; thence south 28 degrees 30 min. east 100 feet; thence north 61 degrees 30 min. east 289 feet; thence north 28 degrees 30 min. west 100 feet to beginning, at the sum of $433.33. Also beginning at a point 640 feet 2 inches south 61 degrees 30 min. west from another point 3504 1-2 feet north 28 degrees 30 min. west from the southeast corner of section 11, township 11, range 25, in Wyandotte county, Kansas, and running from said beginning point south 61 degrees 30 min. west 289 feet; thence south 28 degrees 30 min. east 100 feet; thence north 61 degrees 30 min. east 289 feet; thence north 28 degrees 30 min. west 100 feet to the place of beginning at the sum of $433.33. Also beginning at a point 640 feet 2 inches south 61 degrees 30 min. west of another point 3404 1-2 feet north 28 degrees 30 min. west from the southeast corner of section 11, township 11, range 25, in Wyandotte county, Kansas, and running from the said beginning point south 61 degrees 30 min. west 289 feet; thence south 28 degrees 30 min. east 100 feet; thence north 61 degrees 30 min. east 289 feet; thence north 28 degrees 30 min. west 100 feet to the place of beginning at the sum of $433.33.

E. S. W. Drought, Sheriff.
By W. H. Ryus, Deputy.
F. W. Drought.
S. Bolmer.

Twenty-second—That Snyder was divested of his title to said land by the judicial sale upon the judgments obtained against him by said C. F. Welland

and Henry R. Seegar in the said district court of Wyandotte county.

Twenty-third—That at the time of the commencement of the said actions of which the above named judgments were obtained, the defendant Joseph E. Snyder, was a non-resident of the state of Kansas, and jurisdiction was obtained in said actions by said proceedings in attachment thereon, against the lands in controversy in this action.

Twenty-fourth—That said attachment orders, returns and proceedings were sufficient to vest the court with jurisdiction in said actions.

Twenty-fifth—That the plaintiff's herein hold by regular legal conveyance and title acquired by purchase at said sale under said attachment proceedings.

Twenty-sixth—That the tax deeds to C. I. Richards and J. C. Douglas and the conveyances from them to defendants vests no title in the land in dispute to Nicholas McAlpine.

Twenty-seventh—That the deed from the widow and children of David E. James to the defendant McAlpine conveyed no title, because the said James in his life-time, together with his wife, had conveyed by warranty deed to Joseph E. Snyder, under whom the plaintiffs claim.

Twenty-eighth—That in the fall of 1868 the owners of the land in said fractional sections 10 and 11, to prevent the washing away of the lands adjoining the Missouri river by the current thereof, entered into an agreement with James F. Joy, representing the Hannibal and St. Joe Railroad Company, to donate

lands along the river bank in consideration that said company would rip-rap the bank of said river with rock to preserve the lands, and accordingly David E. James and others of the owners deposited deeds in escrow to be delivered to said James F. Joy on the completion of said rip-rapping, and the said railroad company entered upon the prosecution of the work.

Twenty-ninth—That after the said arrangement with Joy and Company, and after Snyder had obtained his discharge in bankruptcy, the said Snyder, while the said James was absent from the state and was in the state of Michigan, filled in the blank deed or instrument mentioned in finding No. 3, a description of the premises therein described, and also inserted his own name as grantee, as hereinbefore stated in conclusion of fact No. 6.

Thirtieth—That afterwards, said David E. James, on his return from the State of Michigan, learning that the said Joseph E. Snyder had filled in said deed his own name as grantee, and the description of the land described in said deed in conclusion of fact No. 6, expressed his dissatisfactifn with the description of the property, and by mutual agreement between said David E. James and Joseph E. Snyder, said Snyder and wife made and executed the deed dated April 12, and acknowledged April 14, 1869, referred to and set forth in the conclusion of fact No. 7, in exchange for the lands described in the deed mentioned in finding of fact No. 8.

Thirty-first—That said James F. Joy, or the railroad company for whom he was acting, complied with

and carried out the agreement for rip-rapping the bank of the Missouri river, referred to in conclusion of facts No. 28, and received deeds for the lands along the banks of said river from the owners of the lands in said fractional sections Nos. 10 and 11 aforesaid.

To the findings of each of the foregoing conclusions of fact, the plaintiffs and defendants each separately object and except, and still object and except.

And the Court finds the following *conclusions of law:*

1. That the title bond made by David E. James to James Gladden and by him assigned to Henry R, Seegar and held by the said Joseph E. Snyder did not vest in the said Snyder any title, legal or equitable, in the premises described in the plaintiffs' petition.

2. That the deed described in conclusion of fact No. 3 did not vest in the said Snyder any title, legal or equitable, in the premises described in the plaintiff's petition.

3. That on December 2, 1867, when the said Snyder filed his petition in bankruptcy in the District Court of the United States for the District of Missouri, the said Snyder was not the owner of the legal or equitable title, or any estate in the premises described in the plaintiff's petition.

4. That on April 13, 1869, after the said Snyder had been adjudged a bankrupt in the court of competent jurisdiction aforesaid, Snyder acquired the legal and equitable title to the premises described in the plaintiff's petition from the said David E. James, by virtue of the deed of conveyance described in conclu-

sion of fact No. 8, and that the said premises were no part of the estate of the said Snyder at the time he was adjudged a bankrupt, and that therefore the District Court of the United States for the District of Missouri, sitting as a court of bankruptcy, had no jurisdiction to sell or dispose of the said premises to Byron Judd, and the sale of said premises described in the deed of conveyance mads by the assignee in bankruptcy to Judd conveyed no title, legal or equitable, to said Judd or to those holding under him.

5. That by virtue of the force of the two orders of attachment issued by the clerk of the District Court of Wyandotte County, on the 14th day of May, 1874, in the action then commenced in said court by Henry R. Seegar against the said Joseph E. Snyder, and the action of C. F. Welland against the said Snyder, and the return of the sheriff of Wyandotte County of his official acts under said two writs of attachment, the said court acquired and had jurisdiction of the real est ıte described in the plaintiff's petition and vested said title to said premises in the purchaser at the sheriff's sale, held and made in pursuance of the judgments of said court, and that the plaintiffs herein hold by regular conveyance and title acquired from the purchaser at said sheriff's sale under said attachment proceedings.

6. That the plaintiffs are the owners of the legal and equitable title to the premises described in plaintiff's petition, and are entitled to the possession of said premises, and the defendants unlawfully keep the plaintiffs out of the possession of said premises.

To the finding of each of the foregoing conclusions of law the defendants, and each of them, object and except.

JOHN GUTHRIE, Judge.

Filed January 11. 1887.

W. E STERNE,
Clerk Dist. Court.

BRIEF OF ARGUMENT FOR DEFENDANTS IN ERROR.

I.

The land sued for was acquired by Snyder in 1869, he being adjudicated bankrupt in 1867, and was not covered by the six acre deed dated July 27, 1864, of James to Snyder, referred to in special finding of facts 6, printed record, p. 699, but was covered by the four acre deed dated April 13, 1869, of James to Snyder referred to in special finding of facts 8, printed record, p. 701. The land covered by the four acre deed extended over 289 feet further toward the Kansas river than did the land covered by the six acre deed, the land covered by the four acre deed not covered by the six acre deed being the parcel E. A. D. H., including land sued for, on plat at end of *g.*, foregoing abstract p. 19, the land covered by the six acre deed being A. B. C. D. on that plat, and the land covered by the four acre deed being E. F. G. H. on that plat. The title of Snyder to the land E. A. D. H. on the plat was the same precisely as if James had April 13, 1869, conveyed to Snyder that land alone. In fact and on the face of Snyder's title deed of April 13, 1869, the parcel E. A. D. H. was acquired by him after he was adjudicated bankrupt and the assignee in bankruptcy had no lawful right whatever to it. The state court was right in its conclusion of law No. 2, printed record p. 712, that the deed of July 27, 1864, James to Snyder, did not vest in Sny-

der any title, legal or equitable, to the land sued for; also in its conclusion of law No. 3, that when Snyder was adjudicated bankrupt December 2, 1867, he had no title, legal or equitable, to the land sued for in this case; also in its conclusion of law No. 4, that Snyder got title to the land sued for, under the James' deed of April 13, 1869.

II.

Plaintiffs in error have no right in the land sued for under the contract of James of March 5 1860, for 10 acres undivided, (finding of facts 2, printed record, p. 697,) because, 1st, Seegar, assignee of the contract, was a party to the partition suit and was barred by the decree in that case, ante *c*; 2d, the deed of July 27, 1864, James to Snyder, was given in full performance of that contract and the deed filled up was so treated by James and Snyder, ante *g*, (the testimony of George B. Wood, printed record p. 574, showing why Snyder was to have 6 acres on the Missouri river instead of 10 acres undivided); 3d, the assignee in bankruptcy did not claim, nor sell, nor convey the land covered by the contract of March 5, 1860, for 10 acres undivided of W. ½, S. W. ¼ of Sec. 11, and of E. ½ of S. E. ¼, Sec. 10, which sections were according to Armstrong patent, ante *a*, fractional and contained 197.60 acres; 4th, it does not appear from the record that the land sued for is in the W. ½ of S. W. ¼ of Sec. 11, or in the E. ¼ of S. E ¼ of Sec. 10, or partly in each, and 5th, the state court found, conclusion of law 1, that the 10 acre contract did not vest in Snyder any title, legal or equitable.

in the premises sued for, and there is nothing in the record showing this finding wrong, and it closes this point against plaintiffs in error.

III.

The six acres conveyed by the deed of July 27th, 1864, James to Snyder, A. B. C. D. on the plat, ante *g*, belonged to the bankrupt estate. The assignee had a right to and did sell the whole of that parcel to Judd. The latter sold the whole to Cobb and Bartlett, and they, August 15, 1872, the part F. B. C. G. on the plat, ante *g*, between James street extended and the Missouri river to the Hannibal and St. Joseph Railroad Company for $850, ante *i*, printed record, p. 684. The six acre deed of July 27, 1864, was when Snyder was adjudicated bankrupt in December, 1867, blank as to name of grantee and description of the land, but Snyder was authorized by James when the deed was executed in 1864 to fill in, when he saw fit, the name of any one as grantee and a description of six acres of land on the Missouri river. This right of Snyder to fill the blanks in the deed was a property right that passed to his assignee in bankruptcy. Snyder should have delivered the blank deed to his assignee. He probably thought that because the deed was blank as to grantee and description of land it and the right to fill the blanks did not pass to the assignee. At all events he did not turn the deed over to the assignee, but in 1868 filled in his own name as grantee and an accurate description of six acres of land on the Missouri river out of allotment 15 under the partition,

then owned by James, and recorded the instrument. The assignee might rightfully have done these things had he held the blank deed, or they might have been done rightfully by Snyder at his request. In either case the six acres would have been bankrupt assets. In fact Snyder filled the blanks in the deed without the request of his assignee, doubtless without any idea that the land conveyed by the deed was part of the bankrupt estate. He was in this mistaken. The deed filled up and record thereof showed that he owned the six acres when he was adjudicated bankrupt The assignee, as he had a right to do, sold and conveyed the whole six acres covered by the deed of July 27, 1864, thereby ratifying the action of Snyder in filling the blanks in the deed. The conveyance by Snyder to James of the six acres in April, 1869, was as against his assignee a nullity. The assignee so treated it. He did not, nor did anyone, in the bankrupt court, claim that the four acre deed of April, 1869, took the place of the six acre deed of 1864. The bankrupt court did not act on that theory. The four acre deed is not referred to in any proceeding in the bankrupt court, while the six acre deed is expressly referred to and is made the basis of a suit against Snyder by Norman in that court to annul his discharge, printed record, p. 191. The fact of the deed having been once blank as to name of grantee and description of land is not alluded to in the record of the bankrupt court. Of course the assignee could not rightfully claim the whole six acres conveyed by the deed of July 27, 1864, and in addition the parcel

E. A. D. H. on plat, ante *g*, about 2 acres first conveyed by the deed of April 13, 1869.

IV.

The deed of assignee Ess to Judd and proceedings the bankrupt court did not operate to divest Snyder of the title he got, after being adjudicated bankrupt, to the land sued for, under the deed of April 13, 1869. The assignee had no right to that land; the assignment to him did not cover it; but Snyder had a perfect title to it in law and equity. Sparhawk v. Yerkes, 142 U. S. 14; Traer v. Clews, 115 U. S. 528. It is clear beyond question that the bankrupt court could not rightfully divest Snyder of his title to this land, nor rightfully empower assignee Ess to sell and convey it so as to bar Snyder of his title which was good in law against the assignee. It is equally clear that the facts as to Snyder acquiring in 1869 the land E. A. D. H., plat ante *g*, including land sued for, were not presented to the bankrupt court by any allegation or by evidence, and that no order of the bankrupt court expressly or by implication alludes to those facts, or divests Snyder of the title to this land acquired by him after he was adjudicated bankrupt. He was never in anyway notified that assignee Ess claimed this land as bankrupt estate, and he never had any opportunity to set up his title in the bankrupt court. He was not required to show his title to the land in that court till the assignee claimed it, and he was notified according to law of such claim. Nothing done in the bankrupt court or by assignee estop-

ped him or his privies in estate, defendants in error, from asserting title to this land.

The proceedings in the bankrupt court were had and sale and deed by assignee Ess made while the original bankrupt law of 1867 and the first thirty-three general orders or rules of this court, having the force of statute, governed.

Creditors of a bankrupt, duly notified for three weeks under section 14 of the statute, become, like the bankrupt, parties to bankrupt proceedings, with a right to be heard, according to the statute, as to any matter affecting their interest. Norman, purchaser of the Jaccard & Co. judgment against Snyder, and in that right a creditor, had a right to and did proceed by petition in the bankrupt court to have the discharge of Snyder annulled. That was a separ te suit, against Snyder alone. The assignee was not a party to it, never appeared nor asked any relief in it. Norman, in his petition, printed record, page 191, February 9, 1870, mentioned the deed of July 27, 1864, printed record, page 137, James to Snyder, and described the land thereby conveyed in the terms of that deed, and filed with his petition a copy of the deed, and claimed that Snyder owned that land when adjudicated bankrupt, but he did not mention the deed of April 13, 1869, printed record, page 57, James to Snyder, recorded February 5, 1870, nor describe the land thereby conveyed outside of what the deed of July 27, 1864, conveyed, i. e. the parcel E, A, D, H on the plat, ante *g*, including land sued for, nor make any claims respecting that land. There was nothing in the answer or the proof as to

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this last land. It is clear that, because there was no allegation or claim respecting this land as bankrupt estate, no order or judgment in the Norman suit could be made or rendered that would operate to divest Snyder of his title to the land sued for, or to give the assignee power to sell and convey that land and thereby bar him of title thereto. Munday v. Vail, 34 N. J. Law, 418; Reynolds v. Stockton, 43 N. J. Eq. 211; 1 Black on Judgments (1st Ed.), Sec. 242, bottom page 293; 2 Ib. Sec. 619, bottom page 745; Spoor v. Coen, 44 O. St. 502 and cases cited. In fact the bankrupt court made no order and rendered no judgment in the Norman suit respecting the land in controversy. When Norman began his suit he did not know of the four acre deed recorded only four days before. No more can be claimed as the result of that suit than that it settled it that Snyder owned, when adjudicated bankrupt, the six acres conveyed by the James deed of July 27, 1864, and that his discharge in bankruptcy was annulled. That land could have been disposed of by the assignee without cancelling the discharge.

The trial court, in its 11th finding of facts, printed record, page 726, referred to this suit by Norman, but made a mistake in the description of the land mentioned in Norman's petition. The land mentioned in the petition, printed record, page 191, is precisely the same as that mentioned in the deed of July 27, 1864, printed record, page 137, and according to the 6th finding of facts of the court, printed record, page 699. The mistake of the court consisted in inserting the description of land according to the inventory of

assignee Ess, printed record, page 202, filed August 19, 1871, sixteen days after final judgment in Norman's suit, printed record, page 201, and 13th finding of facts, printed record, page 704. The description in the 11th finding of facts is erroneous, particularly in calling for "the northwardly line of James street extended as shown by the plat of Kansas City, Kansas, now on file in the office of the Register of Deeds in Wyandotte county, Kansas, on page 9 of the book of plats, filed on the 3d day of May, 1869, by D. E. James and others." There was nothing of this kind in the Norman petition. The mistake of the trial court was a clerical one, and does not vitiate, because it is corrected by the reference to the Norman petition, the court in the 11th finding saying that "it was alleged by said creditors in said proceedings," meaning Norman and the proceedings instituted by him, there being no other creditor or creditors who instituted any such proceedings. The case made in the state court set out all the evidence, including the whole of the bankrupt record. This mistake in the 11th finding as well as other immaterial clerical mistakes in other findings, of which there are several, is corrected by the written testimony. What the Norman petition described is shown on the face of it, and this court cannot on the whole record decide that it described land other than what it shows it described; in other words, this court is not to be bound by a mistake of the trial court in making a mistake in the 11th finding in setting out the land described in the Norman petition and suit, when the whole record of that suit, by reference made a part of the finding,

shows just what land was described and so corrects the clerical error in writing the 11th finding. All the testimony is as much a part of the record before this court as the special findings of facts. The whole testimony was considered by the Supreme Court of Kansas, and was read by that court as stated, 42d Kansas Reports, page 196 at top, printed record, page 737. In that way the Supreme Court of Kansas got at the truth, and disregarded clerical mistakes made by the trial court in its 11th finding in the description of the lands.

The clerical mistake as to description of land in 11th finding of fact was the fault of plaintiffs in error because they asked the trial court to make 16 findings of fact, printed record pages 693 to 696, the 10th being p. 694, and being wrong in not giving description as in Norman petition, but the trial court adopted it for its 11th finding, without comparing it with the Norman petition. Plaintiffs in error misled or deceived the trial court as to the land the Norman petition described and should not here get a benefit therefrom when they failed to get any such benefit in Supreme Court of Kansas.

The action of the Supreme Court of Kansas in reading the whole record is sufficient to show that the law of Kansas required that it be done. If further authority is needed by this court on that point it will be found in the last briefs filed by defendants in error on the last application of the plaintiffs in error to print a part of the record in this case, in which briefs the statute of Kansas and the decisions thereon are fully set out. The counsel preparing this brief assume that

it is unnecessary here to repeat what was there stated on this point, this brief being necessarily quite long.

The inventory of land by assignee Ess, his motion to the bankrupt court for an order to sell the land inventoried, the order of the court for him to sell, his sale, report of sale, approval thereof and deed to Judd, did not operate to divest Snyder of his title to the parcel E. A. D. H. on plat ante *g*, including land sued for, nor bar him or his privies from claiming that land against Judd and his privies.

General order or rule 19, (Bump on Bankruptcy, 4th Ed. 1871, p. 551), provided,

"The assignee shall, immediately on entering on his duties, prepare a complete inventory of all the property of the bankrupt that may come into his possession; and all sales of the same shall be by public auction, unless otherwise directed by the court."

Assignee Ess was bound to file an inventory or schedule of assets. June 14, 1871, printed record p. 201, in the bankruptcy matter, not in the Norman suit, the bankrupt court ordered him to file a complete schedule of all property belonging to the bankrupt estate yet remaining undisposed of.

This order was unnecessary and did not determine anything as to what property belonged to the bankrupt estate.

August 19, 1871, printed record pp. 201-2, after Norman suit was ended and final judgment entered therein and Snyder was out of court so far as that suit was concerned, assignee Ess filed his inventory or schedule, saying it is a "complete description of all the real estate of said bankrupt not heretofore dis-

posed of." This act of Ess, if the inventory be construed to cover the land sued for, does not bind Snyder nor anyone else. There is no element of a decision that concludes him or anyone. Ess had no power to decide so as to bind Snyder that the land sued for was bankrupt estate.

The inventory refers to no deed nor document of title and gives no information to show how or when Snyder acquired the land or how the land became bankrupt estate. The inventory merely expresses the opinion of Ess, which concluded or settled nothing.

An administrator cannot, by inventorying real estate as belonging to the estate, deprive the heir of a title he did not get by descent.

Sec. 15 of the bankrupt law, 14 U. S. Statutes at Large, p. 524, provided: "He (the assignee) shall sell all such unencumbered estate, real and personal, which comes to his hands, on such terms as he thinks most for the interest of the creditors; but upon petition of any person interested, and for cause shown, the court may make such order concerning the time, place and manner of sale as will, in its opinion, prove to the interest of the creditors."

General order, or rule 21 (Bump Bankruptcy, 4th Ed. p. 552), provided: "Upon his (assignee's) application to the court, and for good cause shown, the assignee may be authorized to sell any specified portion of the bankrupt estate at private sale."

Assignee Ess could have sold and made a good title to all the land belonging to him as assignee without the order of the court. It was, however, competent for him, under section 15 of the statute and rule

21, to petition the court for an order to sell at private sale, or an order as to time, place and manner of sale, and he did so by a motion, saying he "moves the court," etc., printed record, p. 203 and the court made the order set out ante *h*, nothing in the statute or order requiring notice to Snyder, and no notice to him being in fact given.

The section of the statute and rule under which Ess practiced and the court acted, governed cases of sales of property that passed beyond question to the assignee, or the sale of such title as assignee had. They were not intended to and did not confer power on the Court to adjudicate claims of the bankrupt, or anyone else, to property adverse to the assignee.

The court did not in making the formal order of sale decide anything as to the title of the land, nor in terms divest Snyder of title, nor assume to do so. Assignee Ess was in substance merely directed to sell such title, if any, as he, assignee, had under the assignment. An assignment in bankruptcy does not pass title to land acquired after it was made, nor to property exempt by state laws. There are a number of cases where assignees have tried to sell homesteads, which bear on the point here made; Cox v. Wilder, 2 Dillon, 45; McFarland v. Coodman, 6 Bissell, 111, 117, 118; In re Henkel, 2 Sawyer, p. 305; In re Sinnett, 4 Sawyer, 250.

In re James Benson, 8 Bissell, 116, was a case where land had been conveyed to husband and wife as tenants by entireties. The husband became bankrupt, and afterward he and his wife were divorced, and the assignee presented a petition to sell half of

the land as bankrupt assets and notified the bankrupt. The court held that if the husband had any title it was acquired after bankruptcy and could not be sold. If in this case the assignee, without notice to the bankrupt, had obtained a summary order on a petition under section 15 of the statute and rule 21 to sell the land, and sold, and after approval by the court, conveyed, there can be no doubt the deed would have passed no title, no matter how strongly the assignee in his inventory and petition and the court in its order had stated and declared the property to be bankrupt estate.

The bankrupt law authorized many summary proceedings without notice to the bankrupt or creditors, particularly under sections 1 and 15 and rule 21. Many steps, however, could not be taken without notice to bankrupt and creditors, though there was no question as to title.

Under general order or rule 17 of Supreme Court, (Bump on Bankruptcy, 4th ed. p. 551), the court could not authorize the redemption of a mortgage, or the compounding of a debt, without a ten-day notice to bankrupt and creditors.

This court has in several cases stated clearly the principle and rule governing this case, assuming that assignee Ess was ordered to and did sell the land in controversy. In Smith v. Mason, 14 Wallace, 419, 433, A. D. 1871, the court decided that where a fund was transferred by a firm, one of whom subsequently became bankrupt, a contest for the fund between the transferee and the assignee in bankruptcy cannot be determined in a summary way by the District

Court sitting in bankruptcy, without due process of law, but only by a suit in equity or an action at law. "Strangers to the proceedings in bankruptcy not served with process, and who have not voluntarily appeared and become parties to such litigation, cannot be compelled to come into court upon a petition for a rule to show cause." The remedy was by an independent suit.

The court considered the 1st and 2d sections of the bankrupt act, (14 U. S: Statutes at Large, 517-8), as to what could be done summarily and what could be done only by bill in equity or suit at law. In Marshall v. Knox and Norton, 16 Wallace, 551, 560, the court held that the bankrupt court had no jurisdiction in a case of bankruptcy of a lessee on a rule against lessor and sheriff, who had on legal process, seized property of the lessee to show cause, issued upon application of the assignees, to put the property in the hands of the assignees and have them dispose of it, though the assignees alleged in applying for and in support of the rule "that various creditors of the bankrupt claimed to have a privilege upon the property, and that it was necessary for a proper adjustment of all claims, privileges and liens, that the possession should be surrendered to the assignees, to be subject to the bankrupt court." The lessor, served with the rule, contested in the bankrupt court and "stated his own rights and proceedings, and claimed possession of the property through the sheriff, for the purpose of selling the same to raise the amount of his rent." The bankrupt court ruled against him, he could not appeal and began a suit in

equity in the Circuit Court of the United States to enjoin the assignees, but could not obtain an injunction; the assignees took possession of and under the order of the bankrupt court sold the property, after which he filed a supplemental bill for an account and damages, the Circuit Court decided against him and he appealed. This court again considered sections 1 and 2 of the bankrupt law and held the proceedings in the bankrupt court void and sale by assignees wrongful, and charged them for the full value of the goods clear of all expenses, whether the assignees realized that or not, limited by the demand of the lessor for rent. "This court is of opinion, therefore, that the District Court proceeded without jurisdiction in compelling the lessor and the sheriff, under a rule to show cause, to deliver up possession of the goods in question to the assignee."

Mortgage creditors of a bankrupt are, after the assignees gave three weeks notice according to section 14 of bankrupt law, parties to the proceedings. The bankrupt court may, under sections 1 and 20, sell mortgage property free from a mortgage, but cannot do so summarily. Ray v. Norseworthy, 23 Wallace, 128, 137, settles the following propositions:

"Beyond all doubt the property of a bankrupt may, in a proper case, be sold by order of the bankrupt court free of encumbrance, but it is equally clear that in order that such a proceeding may be regular and valid the assignee must apply to the bankrupt court for an order to that effect, and must set forth the facts and circumstances which it is supposed justify the application, that the judge may decide whether

or not the application shall be granted. Secured creditors in such a proceeding must have due opportunity to defend their interests and, consequently, must be properly notified and summoned to appear for that purpose.

None of these conditions were fulfilled in this case. Instead of that the state court finds that the petitioner was never properly notified and that he was not made a party to the proceeding resulting in the order to sell the property in question free of his prior mortgage, and it was upon that ground that the state court decided that his right were unaffected by the proceedings.....No man is to be condemned without the opportunity of making a defense, or to have his property taken from him by a judicial sentence without the privilege of showing, if he can, that the pretext for doing so is unfounded."

In Factors and Traders' Insurance Company v. Murphy, 111 U. S. 738, 745, this court held the same way and said, by Mr. Justice Miller: "We are of opinion with the supreme court of Louisiana, that the record in this case does not show such service of process or other notice as makes Mrs. Murphy such a party to the bankruptcy proceeding as binds her to the sale and discharge of her lien. The case of Ray v. Norseworthy, 23 Wall. 128, is conclusive on that subject, and is, we think, sound in principle." Mr. Archer acted in the proceedings as he understood for her with her knowledge.

Assuming that the bankrupt court ordered assignee Ess to sell, and that he sold the land in controversy, the question is whether the summary order and sale,

without notice to Snyder, deprived him of the land he acquired subsequent to his bankruptcy. The only ground on which it can be held that such summary proceedings had such effect is that Snyder, by filing his petition in 1867 to be adjudicated bankrupt, was in court in 1871 and was at his peril to take notice of and was bound by all that assignee Ess and the court did, though he was given no opportunity to be heard and could not appeal. There is nothing in the bankrupt law to warrant any court in holding that Snyder thus lost title to the land he acquired in 1869. He could not be robbed of land he acquired after bankruptcy by his assignee asking the bankrupt court one day to order it sold as bankrupt estate and by the court the next day without notice to him making the order. The assignee, if he intended to sell this land, on the claim that though Snyder got title after he was adjudicated bankrupt, yet the property was really bankrupt assets, should have brought a suit and set up his claim and brought in Snyder by process so that he could be heard. Sections 1 and 2 of the bankrupt law and general order or rule 32, authorized this. At least he should have given Snyder notice and a chance to be heard on his petition as was done In re James Benson, 8 Bissell, 116. In the noted case of Sparhawk v. Yerkes, 142 U. S. 1, 17, the assignees, (p. 5) filled two bills in equity against the bankrupt to sell memberships in stock exchanges, the bankrupt claiming the memberships against his assignees. In Avery v. Cleary, 132 U. S. 604, 612, an assignee of a bankrupt brought an independent suit against the administrator of the deceased bankrupt to recover

moneys collected on certain insurance policies claimed to be bankrupt estate. Challis v. Coble, 37 Kansas, 564–5. Read p, 461, this brief.

The trial court was right in its 4th conclusion of law, printed record, p. 712, that the land in controversy was no part of the estate of Snyder when adjudicated bankrupt, and that therefore the District Court of the United States for the district of Missouri, sitting as a court of bankruptcy, had no jurisdiction to sell or dispose of said premises to Byron Judd. There was no jurisdiction either of Snyder's person, or of the subject by statement that land acquired after bankruptcy was really bankrupt assets. The supreme court of Kansas was also right in its ruling in this case, 42 Kansas R. 197–8, printed record, p. 739, and 28 Kansas, 825.

The opinion of Mr. Justice Miller in McAlpine and others v. Tourtellotte and other, 24 Federal Reporter, 69, is not authority on any point made in this brief. Plaintiff's in error, McAlpine and Mason, after the decision in 28 Kansas 825 and 29 Kansas 513, brought a suit in equity in the federal court against defendants in error and all other claiming title to the land E. A. D. H. plat ante *g*, to quiet title. The defendants in that suit contended that there was no equity in the bill and that chancery could not on any theory grant the relief asked. Mr. Justice Miller properly heard argument only on this point, first, as, if well taken, it was not necessary to hear argument or take time to consider the intricate facts as to merits. After such argument he held the point well taken and dismissed the bill. If he intended to say that the land

in controversy here was mentioned or referred to in the Norman suit, or that assignee Ess was ordered in that suit, or in any way, to schedule this particular land, or that Snyder had any notice whatever of what Ess asked or the bankrupt court ordered, if anything, respecting this land, he was mistaken as to the facts, his mistake resulting naturally from his not hearing counsel explain the intricate facts, or from his not taking time to learn them, it not being necessary for disposition of the case that he should.

V.

The deed of assignee Ess to Judd, finding 17, printed record, p. 705, and all the proceedings on which it was based, must be construed not to cover the land E. A. D. H, plat ante *g*, including the land sued for. The facts are clearly stated ante *h*. If the deed covers the land sued for then it covers some land Snyder never owned, and does not cover some he did own. The deed cannot be construed to cover only the 4 acres conveyed by the deed of April 13, 1869, James to Snyder, E. F. G. H., plat ante *g*, because that land all lies between center of James street extended and Kansas river, while the deed certainly conveys some land between that center line and the Missouri river. The call in the deed for a line 3604½ feet long measured from the S. E. corner of section 11 cannot be rejected, nor can the line be lengthened, as it must be to reach the line between allotments 15 and 16, on any line of James street extended. If it should be lengthened enough to reach any line of James street extended on the line

between allotments 15 and 16, as must be done to take in all the land Snyder owned, still the distance thence 640 feet 2 inches towards the Kansas river, called for in the deed, would go toward the Kansas river, beyond the distance 580 8-10 feet toward the Kansas river from the center line of James street extended, i. e., beyond the 4 acres conveyed by the deed of April 13, 1869, James to Snyder, finding 8, printed record, p. 701, the land E. F. G. H. plat ante *g*. The absurdity of holding the line 3604½ feet long, called for in deed of assignee Ess, to be a line 3619.39 feet, or 3623.23 feet, or 2627 feet, long to reach the line between allotments 15 and 16 on the line toward the Missouri river, or the center line, or the line toward the Kansas river, of James street extended, will not relieve the deed of the absurdity of covering some land toward the Kansas river Snyder never owned. On all the facts disclosed by the record the deed should be construed by rejecting the call for the line of James street extended; White v. Laning, 3 Otto, (93 U. S.) 514, 527; Cox v. Hart, 145 U. S. 387; Higenbotham v. Stoddard, 72 N. Y. 94. This will make the deed cover exactly the 6 acres conveyed by the deed of July 27, 1864, James to Snyder, finding 6, printed record p. 699, and just the land owned by Snyder as claimed in the Norman suit.

The trial court did not in express terms decide whether or not the deed of assignee Ess to Judd covered the land E. A. D. H., plat ante *g*, or part of it, including the land sued for. It did, however, in findings of fact set out exact descriptions in the deed of July 27, 1864, (finding 6), in the deed of April 13,

1869, (finding 8), in the Norman suit (finding 11, corrected by Norman petition, printed record p. 191) in the inventory of assignee Ess (finding 12), and in deed of assignee Ess (finding 17), and in conclusion of law 6 it held: "That the plaintiffs," (defendants in error here), "are the owners of the legal and equitable title to the premises described in plaintiff's petition," (part of the tract E. A. D. H., ante *g*), "and are entitled to the possession of said premises," etc. The latter part of conclusion of law 4 is that the deed of assignee Ess to Judd "conveyed no title, legal or equitable, to said Judd or to those holding under him." The former part of that conclusion standing alone might perhaps be construed to imply that the deed of assignee Ess covered the land sued for, but it must be read with all other findings and the documents referred to therein, and so read it does not mean that the deed of assignee Ess covered the land sued for. The opinion of the Supreme Court of Kansas is not any more explicit on this point; 42 Kansas, 198, printed record p. 739. The findings and rulings of the state courts are more consistent with the theory that the deed of assignee Ess did not cover the land sued for than with the theory that it did.

VI.

Defendants in error submit that no Federal question is involved in this case; that the decision of the State Supreme Court rests upon an independent ground not involving a Federal question broad enough to maintain the judgment. Hammond v.

Johnson, 142 U. S. 73, 78; Delaware City, etc. Co. v. Reynold *Ib.* 643; New Orleans v. Waterworks Co., *Ib.* 79; Chever v. Horner, *Ib.*, 122, 128; Kawkana Water Power Company v. Green Bay, etc., Company, *Ib.*, 254, 269. The cases show that unless it appears on the whole record that the state court must, in its decision adverse to plaintiffs in error, have necessarily adjudicated a Federal question against the plaintiffs in error, they must fail here. The construction of the deed of assignee Ess to determine what land it conveyed does not involve any Federal question.

This court said in Ferry v. King County, 141 U. S. 668, 673. "The validity of a statute is not drawn in question every time rights claimed under such statute are controverted, nor is the validity of an authority every time an act done by such authority is disputed. Snow v. United States, 118 U. S. 346, 352; Baltimore and Potomac Railroad v. Hopkins, 130 U. S. 210; Cook County v. Calumet &c., Co., 138 U. S. 635.

Defendants in error admit that under the law of Kansas it was not necessary for plaintiff's in error to plead specially the bankrupt proceedings, or deed of assignee Ess to Judd, in order to claim under them at the trial, and put them in evidence. Each party had a right to put in evidence all material documents of title without specially pleading them.

At all events this court cannot reverse unless it shall, on the whole record, find as matter of fact and of law that the deed of assignee Ess covered and made a good title to the parcel E. A. D. H. on plat ante *g*, conveyed to Snyder by James deed of April 13,

1869, and not conveyed by James deed of July 27th, 1864, or at least to that part sued for in this case, and that the state courts decided against that title. The deed of assignee Ess and the bankrupt proceedings were items of evidence that the state courts had to construe and decide, on consideration thereof, whether or not they covered the land sued for, and if they did whether or not they made a good title in Judd. This court must find the state supreme court wrong on both these points before it can reverse.

WALLACE PRATT,
JEFFERSON BRUMBACK,
Attorneys and Counsel for Defendants in Error.

assignee Ess could, without an order of the bankrupt rt, have sold, conveyed, and made a good title only to h land as Snyder owned when adjudicated bankrupt, be- se the title to that land passed to him by operation of under the assignment and it became bankrupt assets. ter-acquired land was not affected by the assignment— s not bankrupt assets; the assignee got no title to it, and could not by a sale and conveyance have passed any le to it. Snyder, by petitioning to be adjudged bankrupt, t all the property he then owned under the jurisdiction the bankrupt court and submitted himself to the court as property-owner in respect to that property only. What- er the court did respecting that property or him as owner ereof was within the scope of the proceedings he inaugu- ated, within the jurisdiction conferred on the court by the atute, and the proceedings as to such land much in the ature of proceedings *in rem*. It may be that when it may e brought in question collaterally he should be bound by uch action without particular notice of each step, though n fact the law required special notice to be given to him nd to creditors before the bankrupt court could regularly o certain things as to that property.

The case of land acquired by Snyder afterward was, how- ever, wholly different. He did not by his petition to be adjudicated bankrupt put that property, or himself as owner of it, under the jurisdiction of the bankrupt court. Any order or judgment the court, in the usual course of bank- rupt business, made respecting such property, or him as owner of it, was beyond what he contemplated and author- ized by filing his petition, and beyond the jurisdiction con- ferred by the statute; or, to use the language used in speak- ing of litigated cases or in ordinary proceedings, was "out- side the issues or case made in the pleadings and void." (Reynolds *vs.* Stockton, 140 U. S., 254, and many cases cited in Vanfleet's Collateral Attack (1st ed.), secs. 746 to 761.)

It is the general rule that when persons are in one ca- pacity—*e. g.*, as heirs or administrators of decedents—parties plaintiff or defendant, in adversary proceedings, orders and judgments bind them only in that capacity, and do not bind property acquired or held by them in any other capacity.

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A widow made defendant, as heir of her husband, to p
ceedings by the administrator to sell land of the husb
to pay debts is not barred of her common-law dower in
land or of an interest in fee which a statute may give i
in lieu of dower. (Compton *vs.* Pruitt, 88 Ind., 171; Ellio
vs. Frakes, 71 Ind., 415; Armstrong *vs.* Cavitt, 78 Ind., 78
In Bishop *vs.* Blair, 36 Ala. R., 80, 85, a widow as admin
tratrix of her husband petitioned the court to order a sa
of land the title to which was first in her and the children
her husband, the latter having at his death no title, legal
equitable, her petition, however, alleging "that it was
the estate of the said" testator, her deceased husband. It w
held no title passed. So right of homestead, under statut
vesting same in widow or children, or both, on death of owne
are not cut off by sales under judicial orders on adversar
proceedings of administrators against and on notic
widows and children. (2 Woerner American Law of Ad
ministration (1st ed.), sec. 483.) There can be no doubt on
principle and authority that if Snyder had, under the stat-
ute of Kansas, occupied as a homestead the land covered by
the motion of assignee Ess of August 24, 1871, and the order
of sale of the next day the sale would not have cut off tha
right.

The motion of assignee Ess, filed August 24, 1871 (*ante*
p. 23), and the order of sale made thereon the next day (*ante*
pp. 23 and 24) covered land that was bankrupt assets, to
wit, on one construction, that contended for by defendants
in error, the whole of the six acres conveyed by the deed of
July 27, 1864, James to Snyder; on any other construction,
part at least of that land. As respects such land, Sny
was bound by the order and sale accordingly, because when
he filed his petition in bankruptcy he knew or was bound
to know that such steps could be taken without notice to
him; but as respects the other after-acquired land, includ-
ing the land in controversy, assuming that the motion and
order covered that, the case is different. The motion a
the order did not bind Snyder in respect of that land,
cause the court never in any way got jurisdiction of hi
owner of that property. There was no notice to him o
motion; none was ordered; none set out in the record;

recited in the order of sale, nor is it stated that he appeared. No statute or rule prescribed any particular notice of such a motion and none was required as respects the bankrupt assets covered by motion and order.

This court cannot reverse the judgment of the State court unless it shall, 1st, construe the motion of August 24, 1871, not only as stating that the land conveyed by the six-acre deed of July 27, 1864, was bankrupt assets, but as also pleading that the land in controversy, though conveyed after the bankruptcy by deed of April 13, 1869, was also bankrupt assets, and pleading it in such a way that Snyder could make an issue on the point; and, 2d, conclusively presume, the record showing no notice, that in some way due notice was given to Snyder of the motion, so that he could have made an issue, the motion being filed one day and the order of sale being made the next.

No such presumption can be made, because bankruptcy proceedings are not common-law proceedings. If the summary proceedings on motion can on any theory as respects the land acquired after bankruptcy be held warranted by the bankrupt statute, the power exercised by the bankrupt court did not belong to it as court of general jurisdiction, but was special and summary, wholly derived from the statute and not exercised according to the course of common law. The failure of the record to show notice to Snyder of the motion of assignee Ess to sell the land in controversy is fatal. This is settled by Galpin *vs.* Page (18 Wallace, 370, '1), in which the question in a collateral attack of proceedings of a court of general jurisdiction ordering a sale of land was whether jurisdiction of the person of a defendant could be presumed, when jurisdiction could be obtained only by the publication of a newspaper notice in the course of exercise of special power, and the record did not show compliance with the statute. In this case this court said, page 373: "Judgment without jurisdiction is unavailing for any purpose." On page 371, at bottom, the court said: "The facts essential to the exercise of the special jurisdiction must appear in such cases upon the record," and at top of same page quoted with approval from Morse *vs.* Presby (5 Foster, 299): "The jurisdiction in such cases" (of the exercise, not

according to the course of the common law, by courts of general jurisdiction of special and summary powers wholly derived from statutes), "both as to the subject-matter of the judgment and as to the person to be affected by it, must appear by the record, and everything will be presumed to be without the jurisdiction which does not distinctly appear to be within it."

The question in the case in 5 Foster arose collaterally on proceedings in bankruptcy, and the court said: "The powers of district courts in relation to the subject of bankruptcy have been regarded, by courts of high character, as falling within the class of special and summary powers, so that in such cases the jurisdiction must appear or be distinctly shown." The rule of this court is stated in 1 Black on Judgments (1st ed., 1891), section 279, bottom page 349, and many cases cited in support of it.

The reading of the record of the bankruptcy proceedings will, as we think, convince any court that, when the bankrupt court on the motion of assignee Ess ordered him to sell lands in a certain way after giving notice as specified in the order, the judge thought he was acting only in respect to lands belonging to the bankrupt estate, the title to which was in the assignee under the assignment. He had ordered the assignee to inventory such lands and such lands only, the motion for order to sell and such order following the inventory as a matter of course. The record, as we think, negatives the idea that the bankrupt judge intended to order a sale of the land acquired by Snyder after his bankruptcy. Such construction of the order is, as we think, a forced one, but plaintiff in error cannot prevail unless this court shall make it. If assignee Ess and the bankrupt court had in mind the land acquired by Snyder after bankruptcy, as well as the land which was part of the bankrupt estate, it is strange that neither used language apt or pertinent to divest Snyder of his title to the former land, but left such an important result to be inferred by a strained construction of language apt and pertinent only for a sale of the land to which the assignee as such had title.

WALLACE PRATT,
JEFFERSON BRUMBACK,
Attorneys for Defendants in Error.

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WALLACE C. PRATT,
JEFFERSON BRUMBACK,
Attorneys for Defendants in Error.

149US791

Office Supreme Court U. S.
FILED.
JAN 18 1892
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERING, NICHOLAS McALPINE and JAMES M. MASON,
Plaintiffs in Error,
vs.
GEORGE W. TOURTELLOTT and GEORGE P. ALLCUTT,
Defendants in Error.

No. ~~480.~~ 145

AFFIDAVIT, NOTICE OF MOTION AND MOTION.

JAMES M. MASON and
WILLIAM M. SPRINGER,
Attorneys for Plaintiffs in Error.

Supreme Court of the United States.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPERING, NICHOLAS McALPINE and JAMES M. MASON, *Plaintiffs in Error,* vs. GEORGE W. TOURTELLOTT and GEORGE P. ALLCUTT, *Defendants in Error.*	No. 480.

NOTICE OF MOTION.

Notice is hereby given that plaintiffs in error have filed their motion in the above named court in words and figures as follows, to-wit:

IN THE SUPREME COURT OF THE UNITED STATES.

Charles Wilkins, William Willis, Jno. Spering, Nicholas McAlpine and James M. Mason, Plaintiffs in Error,
vs.
George W. Tourtellott and George P. Allcutt, Defendants in Error.
No. 480.

MOTION FOR RULE 10.

Now comes the plaintiffs in error, and move the court for an order that the provisions of the 9th clause of Rule 10 of this court, for cutting down and abridging the records of causes here pending, be now extended to this cause, notwithstanding the lapse of time therein required; and that such parts only, as shall be deemed by counsel important to the determination of this cause, be printed in full; and of the matters deemed unimportant only an abstract be printed.

And furthermore, that for the purpose of more conveniently examining the record herein, to enable counsel for both plaintiff and defendant in error to inspect the same with a view to shortening the part to be printed under above mentioned rule, the plaintiffs be permitted to withdraw the record from the files temporarily, and select such parts as they deem necessary to have printed, and submit the same, with the record, to counsel for defendants in error, or in any other way suitable to the court.

JAMES M. MASON and
WILLIAM M. SPRINGER,
Attorneys for Plaintiffs in Error.

That said motion is set, and will be called for hearing in above named court, on Monday, the 25th day of January, 1892, at the opening of the court on that day, or as soon thereafter as counsel can be heard thereon.

JAMES M. MASON, and
WILLIAM M. SPRINGER,
Attorneys for Plaintiffs in Error.

Received a copy of above mentioned notice January 2, A. D. 1892.

JEFFERSON BRUMBACK,
Attorney for Tourtellott and Allcutt, Defendants in error.

Received also copy of affidavit of James M. Mason, sworn to by him December 24th, A. D. 1891, this January 2, A. D. 1892.

JEFFERSON BRUMBACK,
Attorney for Tourtellott and Allcutt, Defendants in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

Charles Wilkins, William Willis, John Spering, Nicholas McAlpine, and James M. Mason,

Plaintiffs in Error,

vs.

George W. Tourtellott and George P. Allcutt,

Defendants in Error.

IN ERROR.

No. 480, of the October term, 1891.

AFFIDAVIT.

STATE OF KANSAS, WYANDOTTE COUNTY, ss.

James M. Mason, of lawful age, one of the Plaintiffs in error in the above entitled cause, for himself, and on behalf of all the other plaintiffs in error, for the reason that he is well informed as to all the matters and things hereinafter stated, deposeth and saith:

1st. That at the time the record in this case was made out by the clerk, J. M. Mason, the attorney who had managed the cause, was so busily engaged in other cases as to be unable to give the proper attention to the condition of the record; and for a long time after, his time was so occupied as to preclude a re-examination of so large a record, with a view to settle the text so as to be printed; and at the time mentioned the property involved in this suit appeared to be of great value, and

the question of costs was lost sight of in the inflated condition of the real estate market.

That several months passed before said attorney could give his attention to the matter, and when he did so, in April, 1891, he for the first time became aware of the great cost of printing the entire record, and procured the estimate of the clerk of this court, and found it to be $1,765. Surprised at this statement, and owing to an unexpeeted depressed condition of real estate values, and the scarcity of money, it became apparent that economy ought to be used in the costs which might accrue in the suit.

Plaintiffs in error opened correspondence with Hon. Jefferson Brumback, of Kansas City, Missouri, attorney for defendants in error, with a view to ascertain if by consent the record could be cut down in harmony with the provisions of the 9th clause of Rule 10 of the Supreme Court, and in answer to said correspondence Judge Brumback wrote the following letter to said attorney:

Kansas City, Missouri, April 10th, 1891.

JAMES M. MASON, ESQ.,
Kansas City, Kansas.

Dear Sir:

I have just received your letter of yesterday in regard to stipulation respecting printing of record in case in Supreme Court, of Tourtellott and Allcutt vs. Wilkins and others. I do not have a copy of rule 10 you refer to, as I understand your letter. My copy is an old one of 1884, an edition of Desty.

I therefore do not know the exact terms of the rule. I do know, however, that it is sensible to print only a

part of the immense record in this case, as only a small part is pertinent to the matter and points that must be decided by the Supreme Court.

I do not, however, see any advantage to any one in making a stipulation unless we agree exactly what is to be printed. If you go first to Washington and pick out what you want, and I am not satisfied and compelled to go to Washington and pick out what I want, we will accomplish nothing of practical value. You admit that you have got to pick out what you desire to have printed, and I think the only sensible course is to pick out before we stipulate. I do not think it wise to make a blind stipulation which really settles nothing.

Yours respectfully,

JEFFERSON BRUMBACK.

And states under date of May 4th, 1891:

"There is a large part in amount of your bill of exceptions taken in the state court that, as I think, need not be printed; particularly *ex parte* affidavits, including your brief."

Based on this there was some further correpondence and negotiations which gave some encouragement that an understanding would be reached to stipulate for the revival of the provisions of the clause of the rule above mentioned, and a cutting down of the case made, or bill of exceptions, to a reasonable figure, and to have the record sent here for that purpose, so that the attorneys for both sides could examine it; but afterwards the defendants in error wholly withdrew from the treaty, and declined to entertain the proposition.

Plaintiff in error believes that the printing of the en-

tire record is oppressive and wholly useless, and that it could be improved by cutting it down to less than one-third of its present volume.

That it is practicable under a design contemplated by plaintiffs' attorneys to print certain parts of the record in full and make only an abstract of unimportant parts, thus giving an opportunity for the court to see what is in the record; and if, on account of any error of judgment in the plaintiff, or difference of opinion, any omissions are made, and it should be deemed expedient to print other parts of the record, it might be done by order of the court.

Plaintiffs in error are informed by the clerk of the court that the case cannot be reached on the docket for trial, in less than about fifteen months or two years, and can see no good reason why the privileges of the 9th paragraph of rule 10 can not be extended to them as well now as ever.

JAMES M. MASON.

Subscribed and sworn to before me this 24th day of December, 1891. My commission expires June 26, 1892.

B. JACOBS,
Notary Public.

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Notary Public.

149 US 791

Supreme Court of the United States.

CHARLES WILKENS, WILLIAM WILLIS, JOHN SPEARING, NICHOLAS McALPINE, AND JAMES M. MASON,

Plaintiffs in Error,

vs.

GEORGE W. TOURTELLOTT AND GEO. P. ALLCUTT,

Defendants in Error.

No. 145.

OCTOBER TERM, 1892.

BRIEF AND ARGUMENT FOR ELIMINATION OF SURPLUS MATTER.

JAMES M. MASON,
Attorney for Plaintiffs in Error.

V. J. Lane & Co., Printers and Binders, Kansas City, Kansas.

Supreme Court of the United States.

CHARLES WILKINS ET AL., *Plaintiffs*,

vs.

GEORGE W. TOURTELLOTT ET AL., *Defendants*.

No. 145 ON THE DOCKET OF THE OCTOBER TERM.

Now comes the plaintiffs in error and moves the court to be permitted to present to the court for the consideration and determination of this case, as the printed record in this case, only that part of the transcript which, in the opinion of the plaintiffs in error, is necessary to raise the points involved upon which they rely for reversal. Namely: 1st, The pleadings upon which the case was tried in the court below.

2nd. The record showing the waiver of a jury and trial by the court.

3rd. Order for change of venue from Wyandotte to Shawnee County, Kansas.

4th. Record in partition suit, pages 34 to 74 transcript, with plat accompanying same, referred to in special findings of fact.

5th. Deed from James F. Joy to David E. James, page

79, for the purpose of locating corners of land described in the special findings of fact by the trial court.

6th. Plat of Kansas City, Kansas, pages 87, 1, 2, etc., referred to in said special findings of fact.

7th. Title bond of David E. James to James Gladden, assigned to Henry Segar, page 844 of transcript, referred to in said special findings.

8th. The Special Findings of Fact and Conclusions of Law of the trial court, pages 857 to 881 to transcript.

9th. The judgment, motion for new trial, settlement of the case, and such other certificates of the judges, and proceedings as become part of the record proper subsequent to the judgment.

10th. Such other matters as in the opinion of the court will be of any use in the consideration of the case.

And eliminating from said printed record all papers or other matters which, although they appear in the transcript, form no part of the record proper. The part of the record deemed necessary to be printed being marked opposite with red ink dashes in the printed index hereto attached, and made a part of this motion, and the parts desired to be eliminated being unmarked.

JAMES M. MASON,
Attorney for Plaintiffs in Error.

To the above named Defendants and their Attorneys of Record:

You will take notice that the plaintiffs in error have filed in the above named court the above motion, and that on the second day of the ensuing term, it being the second Tuesday, and the 11th day of October, 1892, they will call up the same for hearing before said court,

at 10 o'clock A. M. of said day, or as soon thereafter as counsel can be heard thereon.

JAMES M. MASON,
Attorney for Plaintiffs in Error.

Kansas City, Kansas, September 1st, 1892.

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STATE OF KANSAS, }
} ss.
WYANDOTTE COUNTY, }

James M. Mason, being duly sworn, deposes and says that the printed index to which this is attached, is a correctly compiled synopsis of all documents, papers, and matters in the transcript of the case of Charles Wilkins *et al.* vs. George W. Tourtellott *et al.*, No. 145 of the October term, 1892, of the United States Supreme Court.

That affiant took great pains in compiling the same, when the case stood in the Supreme Court of the State, and knows that the same is correct, complete, and can be relied upon.

JAMES M. MASON,

Subscribed and sworn to before me this 1st day of September, 1892. My commission expires January 31, 1894.

HOWARD C. MILLER,
Notary Public.

BRIEF ON MOTION TO ELIMINATE USELESS MATTER.

The jurisdiction in this case depends upon a right or title to real property set up by plaintiffs in error under the bankrupt laws of the United States, and the decision of the State court was against such right or title.

When the transcript was made up in this case, a great mistake was made in incorporating into it a mass of useless matter, which can not be considered by the court for any purpose.

The case was tried in the District Court of Shawnee County, on change of venue from the County of Wyandotte, Kansas, and special and very complete findings of fact were furnished by the court before whom the case was tried, a jury having been waived according to the State practice.

This court will recognize the findings of fact as the result of a judicial determination, binding alike on this court as upon the courts of the State.

These findings are an epitome of the entire transcript.

In Campbell vs. Boyreau, 21 How., 223, it is said:

"Findings of fact by a trial court are as conclusive as "findings by a jury."

The same rule prevails in Kansas.

Hobson vs. Ogden, 16 Kas., 388.

"Same effect is given to them as to the verdict of a "jury."

Beaubien vs. Hindman, 37 Kas., 228.

Weil vs. Vickard, 37 Kas., 696.

Beal vs. Codding, 32 Kas., 107.

This case went up from the District Court to the Supreme Court of the State on a full transcript.

No question was raised by the defendants in error as to the correctness of the findings of fact, and such findings were treated as conclusive by the Supreme Court of the State,—and in the language of River Bridge Co. vs. Kansas Pacific Railway, 92 U. S., 315, 317: "It is "equally conclusive on us," (the Supreme Court of the United States,) and in the syllabus of that case as follows: "In cases where the facts are passed upon by a "jury, or by a court without a jury, or by a referee in a "common law action, this court has the same inability "to review those facts in a case coming from a State "court that it has in a case coming from a circuit court "of the United States."

"On a writ of error to the State court a finding of "facts by a court as a substitute for the jury, in accor- "dance with the State practice in which the judgment "was rendered, is equivalent to the finding of a jury."

Craig vs. Missouri, 4 Pet., 410.

"This conclusiveness of the facts found extends to the findings by a State court to whom they had been submitted by waiving a jury—or by a referee, where they are so held by State law, as well as to the verdict of a jury."

River Bridge Co. vs. Kansas Pacific R'y Co., 92 U. S., 315.

And in Kansas, as shown in the above cited case of Hudson vs. Ogden, 16 Kas., 388, with others in support of the same proposition, the findings of fact by a trial

court are "so held by state laws" to be as conclusive as a verdict of a jury.

And in the United States courts "In the trial of a case by the court without a jury, the review, if the finding is special, can only extend to the determination of the sufficiency of the facts to support the judgment."

Tyng vs. Grinnell, 92 U. S., 467.

In Manufacturing Co. vs. Soxman, 138 U.S., the Hon. Justice Brewer in rendering the opinion says:

"Here we face the proposition that we are not triers of fact."

The special findings of fact in this case, together with the pleadings on which the case was tried, the waiver of a jury, a few documents of title specially referred to in such findings—and therefore became a part of the findings,—and the judgment and procedure which follows those findings—form all the record which need be printed in this case for any purpose; for:

We only raise one question in this case, and that is whether the special findings of fact support the conclusions of law and the judgment.

It is a familiar principle that the findings of fact must in themselves be sufficient to support the judgment, and the evidence cannot be resorted to to supplement them.

Hodge vs. Sudlum, 45 Minn., 290.
47 N. W. Rep., 805.

City of Fort Scott vs. Hickman, 112 U. S., 150 to 165.

Everet vs. Lusk, 19 Kas., 195.

Winchill vs. Buchanan, 46 Kas., 316.

S. K. R'y Co. vs. Girsuch, 47 Kas., 583.

McGonigle v Gordon 11 Kas 174
The E. A. Packer - 140 U. S. 684
Holcomb v Dowell 15 Kas 381

Republican River Bridge Co. vs. Kansas Pacific R'y Co., 92 U. S., 315.

In Durand vs. Martin, in error to the Supreme Court of California, 7 Sup. Ct. Reporter, 587, held that:

"In case of facts specially found by the court below, the evidence on which the finding is made cannot be considered by the Supreme Court of U. S. Opinion by Waite, C. J."

And Justice Brewer says, in rendering an opinion in Wilkins vs. Tourtellott, (this case,) 29 Kas., page 514, speaking of the powers of a court:

"If the judgment does not conform to the findings, we may correct tne judgment."

That is just what we are asking to be done in this case.

As to the rule on error from the Circuit Courts of the United States, see

Stanley vs. Board of Supervisors, 120 U. S., 535.
Allen vs. S. Louis Nat. Bank, 120 U. S., 20.
City of Fort Scott vs. Hickman, 112 U. S., 150.

What Belongs to the Record.

The fact that matter is found in the transcript does not make it record unless it belongs there.

Transcript is one thing. Record another. There is a distinction and a difference.

Transcripts are prepared by clerks who are paid so much per folio, and of course it is to their interest to swell its volume as much as possible.

There is much in this transcript that is not record in fact, and cannot be considered by the court.

For instance, at the outset the clerk who prepared the transcript, has put into it the original petition, the precipæ, the writ of summons—all of which is surplusage, as the case was tried on an amended petition, and answers duly filed by all defendants.

Such matters can be stricken out of the record to be printed without hurting anybody. It seems absurd to print such portions of the transcript, as the case in no manner depends upon these papers.

We have before us an index which is a reliable guide to what the transcript contains

As there were special findings of fact by the court in this case, I will enumerate what I consider necessary to constitute the record.

The only pleadings necessary to be printed are those on which the case was tried, which are

The Amended Petition.

The Answer of Defendants.

Supplemental Answer.

The Reply, page 15 of the transcript.

The next thing that arrests our attention in the transcript that is of any importance whatever is the waiver of the jury, page 21.

Next is the change of venue, in order to show why the case appears to have been tried in Shawnee County, before Judge Guthrie, page 25.

All the intermediate matters up to page 36 are mere matters of evidence, and since the authorities seem to bear us out in the proposition that the evidence that supports the findings of fact will not be looked into by this court, it can serve no purpose in the printed record.

I design and wish to point out just what the court

wants to use for any purpose. It is, it seems to me, useless to print any more.

Page 36 brings to the record in another case—a partition suit, No. 911, in the District Court of Wyandotte County, Kansas,—and is introduced here because it was specially referred to and becomes a part of findings No 4 and 5, pages 36 to 74, including the plat.

Also, the deed from James to Joy, page 79, is an essential part of finding of fact No. 8, which especially refers to such conveyance for the starting point of the description mentioned in conveyance set out in said finding, which, together with the plat of Kansas City, Kansas, page 87½, makes the corner for the starting point certain, and therefore said plat becomes a part of such finding 8, the description in No. 17 joining the same corner.

The plat shown at page 87½ is part of findings No. 17, 19, und other findings, it being referred to several times in the findings of fact, is necessary to their full and complete understanding, and forms part of such findings.

The only additional matter which can cut any figure in the case is the Bond and Release, page 844, referred to and made part of findings No. 1, 2, and 10, and other findings.

Then follow the Findings of Fact and Conclusions of Law, pages 857 to 881. Motion for New Trial, and Settlement of the Case, 882, etc.

The findings of fact by the court, and the pleadings and the few documentary matters specially referred to in those findings, and being in fact a part of those findings, and probably necessary to a full understanding of the findings, form the record in this case upon which

the plaintiffs in error expect to present the question of whether such findings of fact support the conclusions of law and the judgment.

The matters in the transcript from pages 89 to 853, inclusive, constitute the evidence on which the case was tried, consisting of depositions, affidavits, oral testimony, documents and records, &c., which are all embodied in the findings of fact by the trial court, pages 857 to 881, as amply as a full understanding of the case requires—and with the exception of the title bond and release, page 844, there is nothing in them that requires repetition to a full understanding of the findings.

A transcript of the record of the bankrupt court is found at pages 225 to 335. It is wholly unnecessary to print it, as all that is essential or has any bearing on the case is found in the special findings of the court.

Again, from pages 340 to 474 appear a mass of affidavits, evidence, &c., used on a collateral motion to amend attachment returns in the District Court of Wyandotte County, Kansas, pursuant to the suggestion of the State Supreme Court in the opinion of Justice Brewer in this case, 28 Kas., 825.

The result of all which was that the District Court of the State granted to the plaintiffs below the privilege to amend the defective attachment return by attaching the Sheriff's signature thereto, but not allowing an amendment in any other particular. In other words, the Sheriff was allowed to sign unamended returns, and in that condition they appear in the findings of fact, pages 857 to 881. See findings 20, 21.

No question is raised in this court by plaintiff or defendant in error upon the correctness of this decision, and it is conceded that the returns are amended as set

forth in the findings—both parties accepting the result, namely: findings 20, 21, as a substitute for all this mass of affidavits and miscellaneous testimony.

There can be no question but all that mass is mere useless matter, as they do not in any event raise a federal question of which this court can take cognizance at this time.

The great mass of testimony from page 474 to 820 finds its result and epitome in finding No. 19, and other findings.

The remainder of the evidence from pages 820 to 844 is fully epitomized in the findings.

Both parties, plaintiff and defendant, claim under Snyder. The only deeds of land to Snyder at any time set out, either in the record or in the findings, are found in findings No. 6 and 8.

The bankrupt deed, finding No. 17, under which plaintiffs in error claim, covers all the land in controversy, and includes all of the land which the record shows belonged to Snyder.

Finding 19 shows that the land in controversy is the same as the four-acre tract mentioned in the bankrupt deed.

If this be not so, and the defendants in error, plaintiffs below, claim any land still westerly of the four-acre description in the bankrupt deed, the deeds to Snyder set out in the findings, and which are the same as those in the transcript, show that "they (the defendants in error) were not in it," for they would have no support to that title upon which to found an action of ejectment.

But plaintiffs in error are not in possession, nor do they claim title to any land outside of the description in

the bankrupt deed, which is mentioned in finding 17.

This court can determine, we think, all the matters which we care to present for consideration—upon the record as we here suggest. I cannot at this time see that any possible point that would be to the advantage of either party has been omitted.

Authorities on the Subject.

Coming now to the question of what belongs to the record as determined by the authority of our courts, and especially in this court on proceedings in error from State courts. I have examined the law with considerable earnestness, and as a result of my examinations respectfully present the following as the digest of the syllabi and matters decided:

In England vs. Gebhart it is said that putting matter in the transcript does not make it part of the record.

112 U. S., 502.

See Pennock vs. Dialoge, 2 Peters, 1.

In the case of Walston vs. Nevins, 9 Supreme Court Reporter, 192, Chief Justice Fuller says:

"A preliminary objection is raised that the defendants in error should have caused the entire record to be printed."

"But we only require the printing of so much of the record as will enable us to act understandingly without referring to the transcript," * ** "as the case stands we have apparently been furnished with quite enough for the disposition of the questions involved."

This was on motion to dismiss, joined with motions to affirm—purely a question of law.

Our case is substantially only a motion to reverse because the findings of fact do not support the conclusions of law or the judgment—purely a question of law. Is there any difference in principle?

"A paper in a transcript containing the evidence and denominated the "case" is no part of the record—and must be wholly disregarded by this court."

Suydam vs. Williamson, 20 Hon., 427–442.

"Affidavits in the transcript are not a *part* of the record unless they are embodied in an agreed statement of facts or bill of exceptions, or are made so by demurrer to the evidence; and where they are not part of the record an assignment of errors, so far as the same depends upon the affidavits, presents no question for re-examination by the court."

"Evidence, whether written or oral, and whether given to the court or to the jury, does not become a part of the record unless made so by some regular proceeding at the time of the trial."

"Neither depositions nor affidavits, though appearing in the transcript of a common law court of errors, can ever be regarded as a part of the record unless the same are made so by a demurrer to the evidence, or are exhibited in a bill of exceptions."

Balt. and P. R. R. vs. Church Trustees, 112 U. S., 502.

"Matters of parol evidence in such case can never be made a part of the record so as to become re-examinable in a court of errors, unless it be in one of four ways:

1st. By agreed statement of facts.

2d. By bill of exceptions.

3d. By a special verdict.

4th. By a demurrer to the evidence."

Speaking of depositions and affidavits:

"Where neither party excepts to the ruling of the court, either in respect to its admissibility or legal effect, the fact that such deposition or affidavit is exhibited in the transcript is not of the slightest importance in the appellate court, as nothing of the kind can ever constitute the proper foundation for an assignment of error."—*Ibid.* Citing with approval Suydam vs. Williamson, 20 Hon., 433.

61 U. S., 980.

"Nothing can be considered in this court on a writ of error in cases removed from a State court, any more than in others, that is not presented in some appropriate form by the record,—such as a bill of exceptions or an agreed statement of facts or a special finding."

England vs. Gebhardt, 112 U. S., 502.

"The opinion is no part of the record. The fact that a paper is found among the files in a cause does not make it a part of the record."—*Ibid.*

"Affidavits are no part of the record."—*Ibid.*

In admiralty the court promulgates Rule No. 6, as to *what* the record shall contain.

It has promulgated no rule in other cases, except where it is found in its adjudged cases—and the adjudged cases seem to determine by the current of authority that nothing is record which is not needed for the purposes of the court.

Must the Whole Transcript be Printed?

Rule 10 of the court does not say the clerk shall print the whole *transcript*, but only the *record*.—Clause 3.

Clause 3 says he shall take the transcript to the printer, but shall print only the record.

And only in cases of original jurisdiction is the word *whole* used.

Clause 3 of Rule 8 says: The case will not be heard until a complete record containing all that is necessary to a hearing is filed.

A negative being stated, the affirmative is implied, that when all *necessary* record is before the court, the case will be heard.

The plaintiffs in error ask the court to construe Rule 10 so that the word "record" shall be restricted to what is necessary to a determination of this case.

It is understood the clerk of this court regards the application as one for the suspension of the provisions of the rule.

But counsel for plaintiffs in error does not so understand it.

If counsel, however, be wrong in this, the proposition is presented that even this can be done.

In Dent against Ferguson, 9 Supreme Court Reports, 791, the court allowed the provisions of Rule 10 to be suspended under peculiar circumstances of hardship.

It is within the power of the court to relieve from the strict construction of the provisions of this or any other of its rules, when occasion requires—in its discretion.

Respectfully submitted,

J. M. MASON,
Attorney for Plaintiffs in Error.

US 791

Recd. of defendants in error a copy of this document September 24 1892.

J. W. Mason
attorney for plaintiff in.

Office Supreme Court U. S.
FILED.
OCT 7 1892
JAMES H. McKENNEY,
CLERK.

149 US 791

IN THE

Supreme Court of the United States.

CHARLES WILKINS AND OTHERS,
Plaintiffs in Error,
vs.
GEORGE W. TOURTELLOTT AND GEO. P. ALLCUTT,
Defendants in Error.

No. 145.

Answer and Showing of Cause by Defendants in Error against Motion of Plaintiffs in Error, set for October 11, 1892, to print only a part of the Record.

WALLACE PRATT,
JEFFERSON BRUMBACK,
Attorneys and Counsel for Defendants in Error.

THE SIDNEY F. WOODY PTG. CO., 615 DEL. ST

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Kansas City - Mo Sept 26th 1892

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPEARING, NICHOLAS McALPINE AND JAMES M. MASON,
Plaintiffs in Error,
vs.
GEORGE W. TOURTELLOTT AND GEO. P. ALLCUTT,
Defendants in Error.

No. 145.

Error to Supreme Court of Kansas.

Said defendants in error answer matter served September 15, 1892, on Jefferson Brumback, one of their attorneys, as shown by his receipt of that date on the back of one printed copy, filed, as assumed herein, in this Court. Such matter is indorsed on cover, "Brief and Argument for Elimination of Surplus Matter." It contains, pages 1 and 2, a motion of plaintiffs in error, "To be permitted to present to the court, "for the consideration and determination of this case, only "that part of the transcript which, in the opinion of the "plaintiffs in error, is necessary to raise the points involved,

"upon which they rely for reversal." There is a notice that this motion will be called up October 11, 1892, or as soon thereafter as counsel can be heard.

Defendants in error object to the sustaining of such motion for the following reasons.

I. Plaintiffs in error might, under rule 10, and within the time limited thereby, have filed with the clerk a statement of the errors on which they intended to rely, and of the parts of the record which they thought necessary for the consideration thereof, but they did not.

II. After the time within which plaintiffs in error could have made a statement, as indicated in point I, and at the last term of this Court, and in January, 1892, they made in this court a motion, "For an order that the provisions of the 9th "clause of Rule 10 of this Court, for cutting down and abridg- "ing the records of causes here pending, be now extended to "this cause, notwithstanding the lapse of time therein re- "quired; and that such parts only as shall be deemed by "counsel important to the determination of this cause be "printed in full; and of the matters deemed unimportant "only an abstract be printed." This motion, served on counsel of defendants in error January 2, 1892, was overruled by this Court at its last term.

III. In the motion now before the court, plaintiffs in error select "To be permitted to present to the court for the "consideration and determination of this case," nine specified parts of the transcript of the record brought up from the Supreme Court of Kansas, and then add:

"10th. Such other matters as in the opinion of the court will be of any use in the consideration of the case."

In a word, plaintiffs in error, having selected nine itemized portions of the record as "That part of the transcript "which, in the opinion of the plaintiffs in error, is necessary "to raise the points involved upon which they rely for rever- "sal," ask this Court to examine the very long record in the case and pick out such matters, other than the nine selected by plaintiffs in error, "As, in the opinion of this Court, will

"be of any use in the consideration of the case," and to do this without any knowledge by this Court as to what parts of the record defendants in error may rely on, or what points they may, on final argument, make to prevent a reversal of the judgment of the Supreme Court of Kansas.

Defendants in error submit that this Court should not, and will not, do this, nor do anything to prevent defendants in error from presenting and pressing any and every point arising on the long record in the case, which their counsel may think this court should consider.

IV. The record proper in this case to be printed consists of the long transcript sent up from the Supreme Court of Kansas. This transcript was properly made by copying the following documents before the Supreme Court of Kansas, which constituted the record, on consideration of which that court rendered the judgment complained of in this Court.

1. Case made in the district court of Shawnee county, Kansas, which court tried the case, a jury being waived. This case-made, *prepared wholly by plaintiffs in error*, except a few short matters added by defendants in error by way of amendment, contained the pleadings, process, waiver of jury, testimony adduced at trial, findings general and special of the court, judgment, motions and rulings thereon, orders, exceptions, authentication and filing of the document. The original case made was filed, in this instance, in the Supreme Court of Kansas, and was examined by that court to see if the district court made any error, which, under the law of Kansas, justified or required a reversal of the judgment in favor of defendants in error.

2. The petition in error of plaintiffs in error, containing their assignments of error, which were twenty-eight in number and covered seven pages, many of which alleged that the district court erred in making certain specified findings of fact. The petition in error was attached to the case-made and referred to it.

3. Summons in error to bring in defendants in error, or their appearance to the petition in error and joinder in error, or answer, if any, to petition in error.

4. Judgment of Supreme Court of Kansas affirming judgment of the district court, writ of error, and return, and assignments of error in this court.

V. There is nothing in the transcript in this Court which, in the language of the motion before the Court, (p. 2,) constitutes "Papers or other matters which, although they may appear in the transcript, form no part of the record proper."

The plaintiffs in error say, on page 11 of their brief: "There is much in this transcript that is not record in fact, "and cannot be considered by this Court."

This is not true. Everything in this transcript, including every item of proof that has any bearing on any question open before this Court, not only may be, but should be, considered by this Court, just as it was by the Supreme Court of Kansas. That court was not restricted to an examination of findings general or special, but was called on to, and in fact did, read all the evidence and every part of the case-made. The decision of the Supreme Court of Kansas complained of here is reported: *Charles Wilkins et al. v. George W. Tourtellott et al.*, 42 Kansas Reports, pages 176 to 203. At the top of page 196 the court say: "We have carefully read the one thousand pages of written record," etc. Again, on page 198, near bottom, the court, after quoting the finding of the trial court that Snyder acquired the legal and equitable title to the land sued for after he was adjudged bankrupt, and that the property was no part of the bankrupt estate, use the following language:

"It is claimed by counsel for defendants below, that as they claim under a sale in bankrupt proceedings, and as they purchased, as they allege, bankrupt assets, that the decision of this court upon that title can be reviewed by the Supreme Court of the United States. In order to faciliate this result, we make the express rulings that upon the facts contained in the record and the findings of the trial court, the defendants below have no valid claim or title, legal, equitable or otherwise, from the assignee in bankruptcy of Joseph E. Snyder. If a federal question is involved, it will be ultimately decided by the Supreme Court of the United States, and, if we have committed any error, it can easily be corrected."

The record of the proceedings in bankruptcy in the Western District of Missouri, under which plaintiffs in error claimed, is long, and makes many of the one thousand pages of written record in the case-made read by the Supreme Court of Kansas. It is referred to in brief of plaintiffs in error in the "Index to Case-made," on page 4, in 15th line from bottom, thus: "Transcript, Record Bankrupt Court, Western Dist. Mo., 225." The next matter in this "Index to Case-made," (which index Mr. James M. Mason, counsel for plaintiffs in error, swears, p. 6, "Is correct, complete and can be relied on,") is a deed, page 335. The bankrupt proceedings cover 110 pages of "Case-made," were deemed by plaintiffs in error material to their rights on the trial in the district court and on the hearing before the Supreme Court of Kansas, and should certainly be considered by this Court, as the Supreme Court of Kansas considered them, provided this Court shall rule that there is a federal question which it can pass on in this case. Yet, material as these proceeding must in that event be, the plaintiffs in error, who got them into the record and had the Supreme Court of Kansas, as it was under Kansas law bound to do, study them, after arguing there elaborately on them, now coolly propose that they shall not be printed nor used by this Court, though properly brought here by them.

These bankrupt proceedings are referred to in special findings, 9, 10, 11, 12, 13, 14, 15, 16, and constitute a part of such findings, on the same principle on which plaintiffs in error correctly claim that other documents referred to in other special findings are part thereof, (page 13 of brief,) yet plaintiffs in error would have this Court exclude the bankrupt proceedings and consider only the other items of evidence they want.

They say, page 10 of brief:

"We only raise one question in this case, and that is, whether the special findings of fact support the conclusions of law and the judgment."

They, however, filed in this court ten assignments of error, making eight pages of typewritten matter in the copy furnished by the clerk of this court, which raise many other

questions, and every question that can on any form of assignments, be gone into in this Court on the evidence as well as on the findings just as the Supreme Court of Kansas went into same. Such assignments, among other things, allege that the Supreme Court of Kansas erred in sustaining the trial court in its special findings of fact No. 2, because same was contrary to the law and the evidence; and in sustaining the trial court in its 22d finding of fact, because Snyder had been divested of title to the land in controversy under the proceedings in bankruptcy mentioned above in this point, which are not set out, but only referred to, in the special findings, making it necessary for this Court, as did the Supreme Court of Kansas, to pass on the legal effect of such proceedings in bankruptcy; and in sustaining the trial court in its 23d special finding, because there was no evidence to sustain it; and in sustaining the trial court in its special findings 24 and 25, because Snyder had been divested of title by said proceedings in bankruptcy and for another reason; and in sustaining the trial court in certain specified findings of law, because, "Said conclusions of law are inconsistent with the findings of fact, and repugnant to the evidence and not sustained by the record;" and in sustaining the trial court in receiving in evidence certain specified deeds; and in sustaining the trial court in overruling a demurrer to the evidence of plaintiffs in error. It is not necessary to specify further, but it is clear that the assignments of error were drawn on the theory that, as respects any question this Court can consider, it will render judgment, just as the Supreme Court of Kansas did, after considering, as did that court, the evidence on the point as well as the finding of the trial court. The evidence is in the record for the benefit of both parties. The plaintiffs in error cannot, in this Court, shut out parts of the evidence, and limit this Court merely to a consideration of the special findings and such evidence as they want. Some special findings contain errors which the evidence corrects; some are not as full as they should have been, but the evidence supplies the omissions. In addition, there is a general finding for defendants in error, clearly supported by the proofs, and on which alone this Court should, as defendants in error will

claim if merits are gone into, refuse to reverse the judgment of the Supreme Court of Kansas.

VI. The statute of Kansas as to special findings, cases made, and proceedings in error in the Supreme Court, and decisions thereon, show clearly what matters constitute the record before that court, and therefore before this Court. The following are quotations from 2 General Statutes, 1889, of Kansas, the sections being in force at the time this case was tried in the district court and carried to the Supreme Court on error.

Sec. 4385. "Upon the trial of questions of fact by the court, it shall not be necessary for the court to state its findings, except generally, for the plaintiff or defendant unless one of the parties request it, with the view of excepting to the decision of the court upon the questions of law involved in the trial; in which case, the court shall state in writing the conclusions of fact found, separately from the conclusions of law."

Sec. 4648. "A party desiring to have any judgment or order of the district court, or a judge thereof, reversed by the Supreme Court, may make a case, containing a statement of so much of the proceedings and evidence, or other matters in the action, as may be necessary to present the errors complained of to the Supreme Court."

Sec. 4646. "The plaintiff in error shall file with his petition a transcript of the proceedings containing the final judgment or order sought to be reversed, vacated or modified, or the original case made as hereinafter provided, or a copy thereof."

Sec. 4647. "That in all actions hereafter instituted, by petition in error, in the Supreme Court, the plaintiff in error shall attach to and file with the petition in error the original case made, filed in the court below, or a certified transcript of the record of said court."

It is unnecessary to quote the sections as to making up the case, and as to the settling and signing of the same by the judge of the court, and having the same attested by the clerk and the seal of the court attached.

Sec. 4641. "The Supreme Court may reverse, vacate or modify a judgment of the district court, for errors appearing on the record; and in the reversal of such judgment or order,

may reverse, vacate or modify any intermediate order involving the merits of the action, or any portion thereof. The Supreme Court may also reverse, vacate or modify any of the following orders of the district court or a judge thereof: First, a final order. Second, an order that grants or refuses a continuance; discharges, vacates or modifies a provisional remedy, or grants, refuses, vacates or modifies an injunction; that grants or refuses a new trial; or that confirms, or refuses to confirm, the report of a referee; or that sustains or overrules a demurrer. Third, an order that involves the merits of an action, or some part thereof."

There are many decisions of the Supreme Court of Kansas on the sections above quoted. The following indicate clearly the practice in the Supreme Court of Kansas, on error, when the case has been tried below by the court and not by a jury.

Hoopes vs. Implement Company, 45 Kansas, 549-553, a case where the trial was commenced before the court and jury, but before the conclusion the jury was discharged, and the trial concluded before the court alone. "The question whether "the court erred or not in its findings depends entirely upon "the evidence introduced in the trial, and we cannot deter- "mine that the court erred unless we have the whole of such "evidence before us." (P. 553.)

47 Kansas Reports is the last volume of decisions of the Supreme Court at this writing, and the following cases in that volume show clearly the practice in the Supreme Court.

McNulty vs. McNulty, 214: "Upon this evidence the "district court made the special findings of fact, *supra*. * "* * The evidence upon which this finding is based "indicates, to our minds, that there was a recognition on the "part of John W. McNulty of his brother's right to the land." Page 215: "We think it clear from the evidence that there "was no delivery of the deed of June 30, 1876, in the first in- "stance. We base our decision upon the fundamental truth "that a delivery may be good by a subsequent assent," etc.

Booge vs. Scott, page 249, an action in ejectment for land: "The case-made shows that the only evidence introduced to "support the above findings of fact was the deposition of "Benj. J. Fisk and the deed from him to Dickey."

Bradford vs. Loan Company, page 587, the syllabus states correctly the decision in the case: "The evidence in "the case examined and held to be sufficient to sustain the "finding of the trial court that the land in controversy had "been abandoned by both the husband and the wife as a home-"stead prior to the giving of the mortgage thereon, executed "by the husband alone."

There are other cases in Volume 47 bearing on this point, but it is unnecessary to refer to them, or to the many earlier cases.

VII. In objecting to this motion, it is not proper for defendants in error to state the points they propose to make on final hearing of the case, nor to argue the same. Some points, but not all, are indicated above. The "Index to Case-made," in brief for plaintiffs in error, pages 3, 4, 5 and 6, refers to 130 documents and matters. Plaintiffs in error pick out fifteen of these, which they move the court "To be permitte l to present to the court for the consideration and determination of this case," together with "such other matters as in the opinion of the court will be o' any use in the consideration of the case." There are many matters in this long record material to points properly before this Court, besides the fifteen selected by the pl aintiffs in error. When the record shall be printed, defendants in error will pick out and indicate them in argument. They are not bound to pay counsel to go from Kansas City to Washington to examine the record in this Court so as to specify all of them in detail in answer to this motion. This Court should not rule on this motion, so as to bind itself to pass on such points as are open for adjudication here, on consi leration only of a part of the matters considered by the Supreme Court of Kansas in reaching the judgment complained of here. None of the authorities cited by plaintiffs in error warrant a ruling leading to such absurd consequences.

WALLACE PRATT,
JEFFERSON BRUMBACK,
Attorneys for Defendants in Error.

Jefferson Brumback
attorney and counsel for
defendants in error

"Benj. J. Fisk and the deed from him to [illegible]

149 U.S. 791

Office Supreme Court U. S.
FILED.
JAN 18 1892
JAMES. H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 480.

CHARLES WILKINS, ET AL.,
PLAINTIFFS IN ERROR,

vs.

GEORGE W. TOURTELLOTT, ET AL.

OPPOSITION TO MOTION TO APPLY PROVISIONS OF SECTION NINE OF RULE TEN, TO THIS CASE.

WALLACE PRATT,
Counsel for Defendants in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

In the Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 480.

CHARLES WILKENS, WILLIAM WILLIS, JOHN SPERING, NICHOLAS McALPINE, AND JAMES M. MASON, PLAINTIFFS IN ERROR,

vs.

GEORGE W. TOURTELLOTT AND GEORGE P. ALLCUTT, DEFENDANTS IN ERROR.

Now come said defendants in error, and for answer to motion of plaintiffs in error, set for hearing on the twenty-fifth of January, eighteen hundred and ninety-two, for an order that the provisions of the ninth clause of rule 10 of this Court for cutting down and abridging the records of causes here pending be extended to this cause, notwithstanding the lapse of time therein required, and that such parts only as shall be deemed by counsel important in the determination of this cause be printed in full, and of the matters deemed unimportant only an abstract be printed, and for permitting plaintiffs in error to withdraw the record from the files temporarily and select such parts as they deem necessary to have printed, and submit the same with the record to counsel for defendants in error, say—

1. They do not consent that the Court may sustain said motion.

2. The affidavit of James M. Mason, filed with said motion, presents only a part of the correspondence and negotiation between him and Jefferson Brumback, one of the counsel for defendants in error, and the showing made is not fair to said Brumback or defendants in error. Defendants in error present and file herewith a copy of all such correspondence, with the affidavit of said Brumback, so that the Court may be fully advised of the real facts in the case outside of what appears in the record before the Court before deciding whether or not to make a special rule for this case, because the plaintiffs in error did not practice under rule 10.

WALLACE PRATT,
Attorney and Counsel for Defendants in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

CHARLES WILKENS, WILLIAM WILLIS, JOHN SPERING, NICHOLAS MCALPINE, and JAMES M. MASON, Plaintiffs in Error, *vs.* GEORGE W. TOURTELLOTT and GEORGE P. ALLCUTT, Defendants in Error.	No. 480.

1. April 5, 1891, James M. Mason wrote to Jefferson Brumback a letter of the following tenor:

KANSAS CITY, KANS., *April* 5, 1891.

Hon. JEFFERSON BRUMBACK.

DEAR SIR: In the case of Tourtellott *vs.* Wilkens, or rather now Wilkens *et al. vs.* Tourtellott *et al.*, in Supreme Court of United States, I believe we could very much shorten and lessen the expense of printing the case in the United States court.

In regard to this I see that steps for such a purpose may be taken within ninety days of filing the case. It seems that time has passed, but I presume you will not object to doing it now or within a reasonable time before trial. See rule 10.

I understand the case, according to the clerk's statement, will not be reached till about two years from this time.

Will you kindly stipulate to consider the provisions of ninth paragraph of rule 10 of United States practice still in force as to us and waive the matter of time and allow us within a reasonable time to designate what parts of the record we deem necessary to print, and take the same privilege to yourself under the provisions of said paragraph. If you will do so please write a letter to that effect, which may operate as a stipulation, and I will look over the case and see what of it may be cut out so as to save expenses and let you know, and you can then criticise my work—that is, if you think this course the best.

Yours &c., JAMES M. MASON,
Attorney for McAlpine et al.

2. April 7, 1891, Jefferson Brumback wrote an answer to the above letter of the following tenor, to wit:

KANSAS CITY, MO., *Apr.* 7, 1891.

JAMES M. MASON, Esq.,
Attorney-at-Law, Kansas City, Kans.

DEAR SIR: I have received your favor of April 5, 1891, proposing to stipulate as to part of record to be printed in the case of Tourtellotte *vs.* Wilkins *et al.* in the Supreme Court of the United States. If you will prepare such a stipulation as you want, specifying in detail what parts of the record are to be printed, I will consider the matter and give you an answer. I do not see how we can stipulate, however, without examining the transcript on file in Washington city, as it will be necessary for the guidance of the clerk to refer to that transcript, and that only, and to specify just what portions he is to print. Perhaps you have examined this, but I have not. I cannot stipulate in the blind way that you suggest, leaving everything open to be determined after the stipulation as to what part of the record is to be printed. The only sensible way is to determine in

advance and specify in any stipulation made just what should be done.

Yours respectfully, JEFFERSON BRUMBACK.

3. April 9, 1891, James M. Mason wrote a letter to Jefferson Brumback of the following tenor:

KANSAS CITY, KANS., *April* 9, 1891.

HON. JEFFERSON BRUMBACK.

DEAR SIR: Yours of April 7th at hand. You wish me to designate specifically, in advance of a stipulation to abide by clause 9 of rule 10, U. S. practice, what parts of the record I want. I think if you will closely examine the clause all your difficulties will disappear.

It provides that I shall suggest *what I want*, and then you can suggest *what you want*, and you can, within the rule, *add* all the rest of the record if you want it.

Of course, an inspection of the record will have to be made before either of us can act intelligibly; that may entail, however, some expense or trouble. I do not want to entail that expense or trouble until I know that you will consent to still abide by clause nine of rule 10 and be governed by it. It really binds you to nothing less than the whole record and is abundantly fair to both sides.

Yours, &c., JAMES M. MASON.

4. April 10, 1891, Jefferson Brumback wrote a letter to James M. Mason, in answer to the foregoing, of the following tenor:

KANSAS CITY, MO., *April* 10, 1891.

JAMES M. MASON, Esq., *Kansas City, Kans.*

DEAR SIR: I have just received your letter of yesterday in regard to stipulation respecting printing of record in case, in Supreme Court, of Tourtellotte and Allcutt *vs.* Wilkins and others. I do not have a copy of the rule 10 you refer to, as I understand your letter. My copy is an old one of 1884, an edition of Desty. I therefore do not know the exact terms of the rule. I do know, however, that it is sensible to print only a part of the immense record in this case, as only a small part is pertinent to the matter and points that must

be decided by the Supreme Court. I do not, however, see any advantage to any one in making a stipulation unless we agree exactly what is to be printed. If you go first to Washington and pick out what you want, and I am not satisfied and am compelled to go to Washington to pick out what I want, we will accomplish nothing of practical value. You admit that you have got to pick out what you desire to have printed, and I think the only sensible course is to pick it out before we stipulate. I do not think it wise to make a blind stipulation which really settles nothing.

Yours respectfully, JEFFERSON BRUMBACK.

5. April 29, 1891, James M. Mason wrote a letter to Jefferson Brumback of the following tenor:

WILLETTS & MCALPINE
vs.
TOURTELLOTT.

KANSAS CITY, KANS., *April* 29, 1891.

Hon. JEFFERSON BRUMBACK.

DEAR SIR: I am in receipt of letter from James H. McKenney, clerk of Supreme Court of U. S., stating that the costs of printing the record will, with clerk's fees for procuring same, unless it be cut, be $1,765.00. That is very large, you see, and while it is well enough to have the entire record there, so it can be referred to for greater certainty, it is entirely, in my opinion, unnecessary to print more than one-fourth or one-fifth of it.

You can recollect pretty much what is in the case and so can I, and I suggest that we only print *the findings of the court*, which you have already printed in your former brief; also, perhaps, the essential part of the bankrupt record; the bankrupt deed and other deeds in line of bankrupt title.

The attachment proceedings under which you claim, with the attachment deeds and other deeds in line of your title, including your amendment of attachment proceedings, and finding of court thereon.

And that part of the evidence which shows our possession, perhaps (though, perhaps, that is also shown well enough by the findings).

Then, perhaps, that part of the evidence of Dr. Geo. B.

Wood, Segur, and Peters which shows the exchange of the lands of 1874 deed for lands of 1869 deed (though this also may be well enough shown by the findings).

Other than above, it does not seem we need anything, and all the rest is surplusage.

Indeed, it at times seems to me that all I need is the findings of the court, if rightly understood; still I expect we better put in what I have mentioned.

Now, will you please make some suggestions and see if we cannot come to terms. I believe that the Supreme Court, on proper application, will grant me the privilege of the 9th subdivision of rule 10 mentioned by me. You can doubtless get a copy of these rules in K. C. The clerk of U. S. Sup. C't says he has no more of those pamphlet copies, but thinks you can find one in K. C.

Yours, &c., JAMES M. MASON.

6. May 4, 1891, Jefferson Brumback wrote a letter to James M. Mason, in answer to the foregoing, of the following tenor:

KANSAS CITY, MO., *May* 4, 1891.

JAMES M. MASON, Esq., *Kansas City, Kansas.*

DEAR SIR: Your favor of April 29, 1891, as to printing part of record in Tourtellott case, came to hand in due course. On account of pressure of work I could not, however, give the matter attention till to-day. I have a copy of rule 10 in 120 U. S. Reports.

There is a large part in amount of your bill of exceptions taken in the State court, as I think, need not be printed, particularly *ex parte* affidavits, including your briefs.

I cannot trust my memory to decide just what ought to be printed; I cannot decide without examining transcript at Washington. I am sure that some of the plats should go in to make descriptions intelligible. As I remember, the plat of Kansas City, Kansas, and the partition plat are essential. There may be others I do not now remember of.

I will confer with associate counsel in reference to the matter and write again. I do not think you can decide what to print with any certainty without examination of transcript at Washington. We cannot afford to have any material part left out—at least I cannot. If material matter

be left out it may cause a reversal of the judgment. All I want is to have in everything essential to maintain the judgment. It is to your interest, in a sense, to have something left out and in that way secure a reversal.

Yours respectfully, JEFFERSON BRUMBACK.

7. May 14, 1891, James M. Mason wrote a letter to Jefferson Brumback of the following tenor:

WM. WILKENS *et al.*
vs.
GEO. W. TOURTELLOTT *et al.*

KANSAS CITY, KANS., *May* 14, 1891.

Hon. JEFFERSON BRUMBACK.

DEAR SIR: Your letter of May 4 at hand. I have no notion or desire to gain any advantage by abbreviating the record in above case, but only make the suggestion in the interest of economy.

I want all in that is important to either side; but certainly if we select properly we need not print more than $\frac{1}{3}$ of the record. Of course the trouble is in selection.

I have or will have an attorney in Washington, I presume; perhaps something can be done through them.

I agree with you that all the plats are to go in and probably the partition proceedings, or so much of them as show the decree and what it stands on.

Can we get the record mailed here or expressed here for examination? We can from Kansas supreme court after copy is taken in similar case.

Yours, &c., J. M. MASON.

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8. May 15, 1891, Jefferson Brumback wrote a letter to James M. Mason, in answer to the foregoing, of the following tenor:

KANSAS CITY, MO., *May* 15, 1891.

JAMES M. MASON, Esq., *Kansas City, Kas.*

DEAR SIR: I have just received your letter of yesterday in regard to printing part of record in the Tourtellotte case. I do not think we can get the record from Washington here.

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I know that the clerk there is very strict, and the records are not allowed to be taken from the office; at least that was the rule the last time I had occasion to argue a case there, and there has been no change in rules so far as I know. I have not yet had an interview with General Blair and Mr. Pratt in regard to this business.

Yours respectfully, JEFFERSON BRUMBACK.

9. November 7, 1891, James M. Mason wrote to Jefferson Brumback a postal card of the following tenor:

KANSAS CITY, KANSAS, *Nov.* 7, 1891.

Hon. JEFFERSON BRUMBACK,
Attorney-at-Law, Kansas City, Missouri.

DEAR SIR: How about the interview you suggested having with Pratt about the printing of selected portions of the record in Tourtellott case?

Did you see Pratt, and what does he say?

I would like to do more in the matter during the present term of the Supreme Court.

Yours respectfully, &c., J. M. MASON.

10. November 10, 1891, Jefferson Brumback wrote to James M. Mason a letter, in answer to foregoing postal card, as follows:

KANSAS CITY, MO., *Nov.* 10, '91.

J. M. MASON, Esq., *Kansas City, Kansas.*

DEAR SIR: Your postal card of Nov'r 7, 1891, duly rec'd. On conference with Mr. Pratt and Gen'l Blair it has been decided to make no stipulation respecting the printing of the record in Tourtellott case.

Very respectfully, JEFFERSON BRUMBACK.

STATE OF MISSOURI, } *ss*:
Jackson County, }

Jefferson Brumback makes oath and says that the foregoing nine pages of type-written matter give a copy of the correspondence between affiant and James M. Mason, referred

to in affidavit of said Mason, including the two letters of April 10, 1891, and May 4, 1891, mentioned in the affidavit, all made from original letters of said Mason and letter-press copies of affiant's letters.

General Charles W. Blair and affiant tried the case for defendants in error, Tourtellott and Allcutt, in district court of Shawnee county, Kansas, Wallace Pratt, one of the attorneys with affiant who took part in a former trial, not being present. In last trial Tourtellott and Allcut recovered judgment. The case was ejectment for a small tract of land in Wyandotte county, Kansas, and it was necessary in deciding the suit for the court to pass on questions arising on tax deeds, on proceedings in partition, on proceedings in attachment suits, including amendment of sheriff's return therein, on various deeds, and on the effect of proceedings in a bankrupt court respecting the land in controversy, conveyed to one Snyder after he was adjudicated bankrupt. Over the objections at the trial of said Blair and affiant, said Mason introduced in evidence the "*ex parte* affidavits, including briefs," mentioned in affiant's letter of May 4, 1891, and in the short extract therefrom copied in affidavit of said Mason. Affiant thought at the time and still thinks such affidavits and briefs, the latter being of said Mason and some of the affidavits his, were not competent evidence for any purpose, but said Mason insisted on putting them in the case, and after being defeated would have them in the case made or the bill of exceptions. Such matter, as affiant supposes, constitutes over one-half the transcript in the supreme court, though affiant may be in error as to this, not having seen the transcript. Affiant, however, knows that such affidavits and briefs are of great length.

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As affiant understands, the plaintiffs in error desire to avoid the expense of printing matter in the record which they would have and got there against the objections of defendants in error.

Affiant makes this affidavit to be submitted with the motion of plaintiffs in error, noticed for hearing January 25, 1892, believing that affiant is shown up in a wrong light by the affidavit of said Mason, who should, in simple justice to affiant and his clients, have set out all the correspondence and not picked out a small part of what affiant wrote and omitted wholly his own letters, which are quite material.

JEFFERSON BRUMBACK.

Subscribed in my presence and sworn to before me this fifteenth day of January, A. D. 1892.

[NOTARIAL SEAL.] HECTOR LITHGOW,
Notary Public, Jackson Co., Mo.

Received copy of foregoing affidavit and answer of defendants in error January 15, 1892.

J. M. MASON,
Att'y for Plaintiffs in Error.

149 U.S. 111

Supreme Court of United States.

OCTOBER TERM, 1892.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPEARING, NICHOLAS McALPINE and JAMES M. MASON,
vs. Plaintiffs in Error,
GEORGE W. TOURTELLOTT and GEORGE P. ALLCUFF,
Defendants in Error.

No. 145.

ERROR TO THE SUPREME COURT OF KANSAS.

BRIEF AND ARGUMENT.

J. M. MASON,
Attorney for Plaintiffs in Error.
WM. M. SPRINGER, and JOHN W. DAY, of Counsel.

V. J. Isaac & Co., Printers and Binders, Kansas City, Kansas.

24

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JEFFERSON BRUMBACK.

Subscribed in my presence and sworn to before me this fifteenth day of January, A. D. 1892.

[NOTARIAL SEAL.] HECTOR LITHGOW,
Notary Public, Jackson Co., Mo.

Received copy of foregoing affidavit and answer of defendants in error January 15, 1892.

J. M. MASON,
Att'y for Plaintiffs in Error.

149 U.S. 791

Office Supreme Court U. S.
FILED.
JAN 23 1893
JAMES H. McKENNEY,
CLERK.

Supreme Court of United States.

OCTOBER TERM, 1892.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPEARING, NICHOLAS MCALPINE and JAMES M. MASON,
vs. Plaintiffs in Error,
GEORGE W. TOURTELLOTT and GEORGE P. ALLCUTT,
Defendants in Error.

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ERROR TO THE SUPREME COURT OF KANSAS.

BRIEF AND ARGUMENT.

J. M. MASON,
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WM. M. SPRINGER, and JOHN W. DAY, of Counsel.

V. J. Lane & Co., Printers and Binders, Kansas City, Kansas.

Supreme Court of United States.

OCTOBER TERM, 1892.

CHARLES WILKINS, WILLIAM WILLIS, JOHN SPEARING, NICHOLAS MCALPINE and JAMES M. MASON,
vs. Plaintiffs in Error,
GEORGE W. TOURTELLOTT and GEORGE P. ALLCUTT,
Defendants in Error.

No. 145.

ERROR TO THE SUPREME COURT OF KANSAS.

BRIEF AND ARGUMENT.

This case comes up on writ of error from the highest court of the State of Kansas, where it stood on error from the District Court of Shawnee County, Kansas, where it had been taken by change of venue from the

District Court of Wyandotte County, State of Kansas, on application of the defendant in error, plaintiffs in the trial court.

The pleadings were the ordinary petition in ejectment under Kansas practice. General denial.

Special and complete findings of fact were furnished by the trial court. The conclusions of law and judgment were for defendants in error. But plaintiffs in error claim that the conclusions of law, based on such findings of fact by the trial court were erroneous, and compel a judgment for the plaintiffs in error instead of for the defandants in error.

Both parties claim under Joseph E. Snyder.

The plaintiffs in error by a bankrupt deed from the assignee in bankruptcy, dated in 1871.

The defendants in error by deeds under attachment proceedings against the same Joseph E. Snyder, commenced in May, 1874.

It will therefore be seen that the bankruptcy title antedates the attachment proceedings by about 3 years.

If the bankruptcy proceedings were regular, and carried the title of Snyder to the bankruptcy-sale purchaser, there was nothing left in Snyder for the attachment title to act upon, and the title of plaintiff in error is perfect.

If the findings of fact are sufficiently specific to show this state of facts, a reversal must follow, and this court must either enter up judgment for the plaintiffs in error as against defendants in errer, or remand this case to the state courts with orders to do so.

The state courts have denied the validity of the proceedings of the United States courts under the bank-

rupt law of the United States; therefore, a i
tion is fairly presented, and this court has ju

To the mind of the plaintiffs in error this
question presented or that ought to be presented, namely: whether the bankrupt proceedings carried the title to the bankrupt sale purchaser. If they did, it is conceded that the title is in the plaintiffs in error under their bankrupt deed, and the attachment sale purchaser gets nothing by his title, based on proceedings commenced three years later.

It may be said that there are two branches to the question last mentioned:

1st. Whether the bankrupt proceedings and the sale of Snyder's property thereunder were *res adjudicata*, and barred the bankrnpt Joseph E. Snyder and all who hold under him by claim of title subsequently acquired.

2d. Whether the property sold under the bankrupt sale was in fact bankrupt assets, and therefore subject to the jurisdiction of the District Court sitting in bankruptcy, or was property acquired from sources subsequent to the filing of the bankrupt petition, and therefore exempt property.

Now, if the first question is answered in the affirmative, that is: that the matter was and is *res adjudicata* by the bankrupt proceedings, and is not now an open question, then there will be no necessity for considering the other question whether the property sold was in fact bankrupt assets, because *that* was, or might have been, decided in the bankrupt proceeding itself, and is therefore final.

But this same case has been to the Supreme Court of the State of Kansas twice, once before this last time from whence this record now before us comes.

And when it was before that State Supreme Court on a former hearing and on a somewhat different set of findings of fact from what is now in this record, it was passed upon by the Honorable Justice Brewer of the then Supreme Court of the State of Kansas, but who has since climbed the ladder of fame faster than this case has worked into the Supreme Court of the United States. We will not say that the Honorable Justice must have had on his seven league boots, but at all avents his fame is here ahead of this case.

The State Supreme Court in the opinion delivered by Mr. Justice Brewer (see 28 Kansas, page 836,) seemed to think that the first question above mentioned should be answered that such proceedings were not *res adjudicata*, but left the second question open as to whether the property was bankrupt assets or not, and he proceeded to consider the second question above mentioned and concluded on the balancing up of the testimony in his own mind that the plaintiffs in error—defendants below—had not sustained the burden of proof which he considered was cast upon them, (see page 839 of same report,) and therefore found for defendants in error (plaintiffs below.)

I will not now stop to point out the errors of law and of fact into which the learned judge drifted in rendering this opinion. Suffice it to say the case was finally reversed and sent back for a new trial on a rehearing. See opinion in 29th Kansas, page 513-516. But we were led to believe by these opinions that perhaps our title was not in all respects just right, and impressed with the idea that it might be made better by going into the federal courts, where it originated, and asking on the equity side of the court for something to be done

now which by the tone of Justice Brewer's opinion we conceived might have been necessary at the time of the bankrupt proceedings—namely a decree declaring the property sold to be bankrupt assets before scheduling and selling it as such. We filed a suit in the Circuit Court to quiet our title as against these adverse claimants.

The result of this suit was an opinion by Mr. Justice Miller, of the Supreme Court of the United States, delivered in the Circuit Court of the United States at Leavenworth, Kansas, June term, 1885, 24 Federal Reporter, page 69-74, in which our reliance on Judge Brewer's opinion was considerably shaken, and from which we quote as follows:

"These proceedings to subject this land to sale by the "assignee in the Court of Bankruptcy were all taken "after these deeds were made and the last one of them "was on record in the office of the proper register of "lands in the county. Mr. Snyder was brought in, if "that was necessary, de novo, in order to have his dis- "charge set aside, and he answered, and this matter "was set up in that proceeding, that he did own this "land, and that was tried in that proceeding, and his "discharge was set aside on that ground. Then, imme- "diately, the new assignee was ordered to schedule this "property, and did schedule and did get a decree, and "did sell it, and these plaintiffs, or the men from whom "they purchased it, bought it at that public sale. Now, "it is my opinion that the proeeeding was binding upon "Snyder, and it bound him just so far as it described "the land it sold and no further; that whatever title "was in Snyder at that time, if he varied the title be- "tween the time of his going into bankruptcy and the

"time of this judicial sale, nevertheless it took all the "interest which he had when the sale was made. I "think he was still in the Bankruptcy Court; that he "was still a party in the proceeding; that if he got any "better or different title from the time that he went "into bankruptcy to the time that this judicial sale was "made, that that title inured to the benefit of the pur- "chaser; that such legal title as was then in him on the "records of the register's office was sold and bought by "these parties, if covered by the description, and no "more; that they took what they bought by that des- "cription in their deed and in their sale, and they take "such title as Snyder had to it at the date of the decree, "and that there is no place for chancery to interfere "about it. These parties, the present defendants, are "purchasers, subject to all of these transactions; they "are all purchasers subsequent to the decree setting "aside his discharge; they are all subsequent to the de- "cree of sale; they are all subsequent to the sale and "making and recording of the deed; they are all pur- "chasers with notice of what was done in the Bank- "ruptcy Court, and as that bound Snyder, that bound "them."

After this opinion was formulated by Mr. Justice Miller, another case arose in the District Court of Wyandott county, Kansas, wherein the widow and heirs of Joseph E. Snyder, having "jumped" on a small portion of this disputed land under their impressions drawn from the opinion of Twenty-Eighth Kansas, that the bankrupt title was no title, were sued in forcible entry and detainer by McAlpine, and the opinion and rulings of Hon. Judge Wagstaff, of the District Court of said county, having followed Mr. Justice Miller in declaring

the bankrupt title solid, these gentlemen, the defendants in error, became alarmed about the fate of this case, and very sagaciously took a change of venue to a Judge who wore, it was conceived, a different pair of legal spectacles and would see things in another light. The case was removed before His Honor, Judge John Guthrie, of the Shawnee County District, who tried the case at the April term, 1886, of that court, and on the 11th day of January, 1887, rendered the findings, judgment and proceedings contained in this record.

The case was then taken by plaintiffs in error to the Supreme Court of Kansas, and the opinion of the court in that case is found in 42 Kansas, page 176.

Now, if I have the right idea of the reversal of this case and the granting of a new trial under the opinion in the 29th Kansas, it was an absolute reversal and a granting of a new trial; and I understand it was the same as if all the marks had been wiped off the blackboard, as when we were school boys. It disposed of the old record so that it had no further effect on the case.

The record that is here before the court now has some findings of fact in it that were not in it when the case was before the Supreme Court the first time, when Justice Brewer delivered the opinion above alluded to, and some of the findings of fact that were in the first record are not now in the record before this court; and, altogether, there is quite a change of front.

For, in the last trial, the new trial, granted by the State Supreme Court, the plaintiffs below (defendants in error) did not undertake to show in evidence or in any way rely on any doctrine of election, abandonment, priority of possession, want of consideration, and many other incidental matters which were strongly comment-

ed on by Justice Brewer in his first opinion, and made the handle for an argument against the success and validity of the bankrupt title under which plaintiffs in error have at all times claimed. In truth, our adversaries left out about all the testimony they had bearing on those propositions, hardly any of which were really tenable. But it is not worth while to comment on why they did not produce the line of witnesses they had before presented, because it would be entirely outside of the case to do so, as the case must stand or fall on the present record, and not upon the former record, nor the merits or demerits of Justice Brewer's opinion in connection therewith.

But if the Supreme Court of the State of Kansas in making its later opinion (see 42 Kans., pages 176-203,) had taken into consideration and fully appreciated the changed condition of the record and findings in the new case, and at the same time had continued and adopted, appreciated and observed, the line of reasoning which Justice Brewer's opinion indicated, it must assuredly have come to the conclusion under the new finding of the trial court, No. 30, (see page 21) that the property sold under the bankrupt sale proceedings was in fact bankrupt assets, and therefore the title of plaintiffs in error (defendants below) was "*solid*," for in 28 Kan., page 829, paragraph at top of page, appears the turning point in Justice Brewer's opinion. He says, beginning bottom page 838, after stating a series of facts which the court might also do well to read:

"This, as we have said, presents the most difficult "and embarrassing question in the case. We have "spoken of these last matters as facts. They are testi- "fied to by Dr. Wood. They do not appear upon the

"face of the record, nor do they come to us from the im-
"mediate parties to these transactions, for both Snyder
"and James are dead. The testimony of Dr. Wood
"springs not from being a party to the transaction, but
"from information received through his conversations
"with the parties, and from his familiarity with the
"dealings of the various parties interested in this re-
"serve, in connection with their respective interests."

Now, it would appear from the above that the writer of this opinion and the Supreme Court did not consider that Dr. Wood was in a position that his testimony would be conclusive in the matters he had stated, but left the matter in doubt, but the court holding, it appears, (although we claim erroneously) that the burden of proof was on the assignee and parties representing the bankrupt title to prove by a preponderance of evidence the facts claimed. (See next paragraph following the matter above, citing Mays vs. National Bank, 64 Pa. St., 74, a case which upon examination turns out to be one between a party to a cause and another not a party to the action, but a stranger to the suit, and which we claim not to be good law as applied, between the assignee, the bankrupt, and the bankrupt creditors, all parties to the bankrupt proceeding, and on which we have a number of authorities to cite that, in the case of the concealing bankrupt, which in this case according to the findings and record the bankrupt court, all the presumptions and burden of proof in such cases "is on the party putting out the lights.")

Est. of Franklin Sav. Fund Soc. See Intelligencer of May 29, 1874. Reported also in 10 Philadelphia.

In re Bailey, 1 N. Y. Leg. Obs.. 18 S. C. 5 Law Rep., 320.

Bump on Bankruptcy, Sec. 5110, pp. 711-712, 10th edition, and cases there cited.

The finding in the bankruptcy court was that the property belonged to the "estate of the bankrupt." That expression has a specific and definite meaning, and means such property and rights of property as the bankrupt act vests in the assignee.

In re Hambright, 2 B. R., 107. See Bankrupt Record, pages 151-203 of this record.

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But it matters not where the burden of proof is as a question of law, for the trial court in this record (finding No. 30) has disposed of this matter by finding that the property conceded to be bankrupt assets and mentioned in the deed bearing date 1864, was exchanged and given in lieu of the property in the deed of 1869, and the new findings show that the defendants below took actual possession of the property in the early Spring of 1874, prior to the time when the attachment title under which defendants in error (plaintiffs below) claim, took its rise.

And we can not help thinking, therefore, that if Justice Brewer was now to sit upon this case with the same record and new finding of exchange of property of 1864 for the property of 1869 as an adjustment of a mistake, that he too, now, would be the strongest advocate of the strength and perpetuity of our title.

And while we differed in the former hearing with the learned Judge as to whether the *carte blanche* deed of 1864 was not to be ignored entirely as void, and the

deed of 1869 to be considered as the first partition of the rights of Snyder acquired under the title bond of 1860. Yet it makes no difference after all whether we so consider it, or that the deed of 1864 was ratified by the transactions of 1869, as thought by Judge Brewer. It is merely our two ways of looking at and treating the same transaction—and we are willing to concede that Justice Brewer was right about it—and then take the finding No. 30 as the trial court gave it to us and say that if the property of 1864, ratified to be bankrupt assets by the act of James was exchanged pending the bankrupt proceedings, for the property of 1869, as shown by finding No. 30 above set forth and our grantors immediately took actual possession of it in the early Spring of 1874, as shown by finding No. 19, and were in possession of it at the time of the pretended attachment under which defendants in error (plaintiffs below) claim—and there is no doctrine of election, or abandonment, or other subtleties in the case on this new hearing, as in the former one, and nothing on which to base such a "novel" argument as the Supreme Court made on the first opinion in regard to these matters and all the findings of the new case are clear-cut, and show no such refinements of human reason.

Then we say we accept and concede that D. E. James did ratify by his acts of 1869 the deed dated in 1864,—made in 1868,—and that our parties, the assignee in bankruptcy, the bankrupt-sale purchaser, the plaintiffs in error, (defendants below) took poss[illegible] lands, and the same was treated as b[illegible] ever since; and the doctrine of election [illegible] by defendants in error is an exploded [illegible] no time or place in this new hearing, there being no

finding or evidence whatever to sustain any such theory in this, the present, record.

And as I have said, I do not think that the opinion rendered on a former hearing of this case on a different record has anything to do with the case as it stands on the present record.

The questions which arise occur only upon the present findings of fact and the record which sustains them. There is no suggestion by either party of error between the evidence and the findings that the court can take any notice of. The defendants in error have no appeal here. The suggestion of error is between the findings and the conclusions of law, and judgment rendered—therein is where the surgical knife of the court is to be inserted between the findings of fact and the judgment. And for the strength of my position herein I refer to the authorities cited to the court in the beief of plaintiffs in error, entitled "Brief and Argument for Elimination of Surplus Matter," pages 8, 9, 10, 11, heretofore submitted, and which I ask the court to consider as part of this brief the same as if cited therein.

If all the above reasoning is sound and complete, there remains but one question for this court to consider, and that is: *what judgment do the findings of fact compel?*

The trial court having rendered a judgment against plaintiffs in error (defendants below) on the special findings of fact—among other errors assigned in taking the case to the State Supreme Court was that the court erred in the law of the case; see motion for new trial, (page 638 of the record,) and among the assignments of error is one that the decision is "*contrary to law.*"

The Supreme Court of the State absolutely refused to

review their opinion in the 28th Kansas and reconsider the same in the light the new findings and the new condition of the record—denied the rights of the plaintiffs in error under the bankrupt title—refused to correct the mistakes and irregularities of the trial court.

After the finding of fact No. 30 supplied to the case what in Justice Brewer's opinion the case lacked to make the property sold bankrupt assets, the court delivered its opinion of 42 Kansas, ignoring the changed condition of the findings, and refusing to reconsider its comments and reasons for its decision in the old case, in no sense applicable to the new hearing, because they had been wholly abandoned by the defendants in error (plaintiffs below.)

When the law was erroneously supposed to be that the burden of proof was on the bankrupt title parties to prove that property sold under bankrupt sale was in fact bankrupt assets.

Although this was a case of a concealing bankrupt whose discharge had been set aside for cause, and was distinguished under the law (see findings of facts Nos. 9, 10, 11, 12.) Yet the court proceeds to apply the law applicable only to third parties, to the parties to the suit.

When the law was erroneously supposed to be that the summary proceedings of a bankrupt court were insufficient to authorize the sale of property belonging to the bankrupt, to be sold for the benefit of creditors—under the bankrupt's petition asking for the court to administer upon his estate.

See contra Smith vs. Mason, 14 Wall., 419.
Marshall vs. Knox, 16 Wall., 551.
O'Brien v Wild 2 allo 81-85

Est. Franklin Sav. Fund Soc., see Intel. of May 29, 1874, reported in 10 Philadelphia.
Wells on Res Adjudicata, sec 323.
Denforest vs. Day, 32 N. Y., 290.
Supervisors vs. Briggs, 2 Denio, 33.
In re Carrier, 48 Fed. Rep., 161.
McAlpine vs. Tourtellott, 24 Fed. Rep., 69–74.

And see brief and arguments in that case, where the
331 subject is fully discussed and numerous authorities cited, pages 245 to 348 of the record.

It was then that the court stuck fast on the opinion of 28 Kansas, from which all argument seems powerless to extricate it, and it persisted in applying the reasoning applicable alone to the old record to the new record, in the present case refusing to consider the new record, as it should without reference to the old, and absolutely refusing to apply the law of the case to the findings of fact by the trial court on the last hearing, and on page 196 of 42 Kansas the court summarily disposes of the whole question of the bankrupt title by saying: "the case is the same now as when first presented," and "the issues of fact here presented are not different "from the facts as presented in the case when it was "before the Supreme Court, and there is but one ques- "tion which we propose to examine here." This court has not the old record before it, and has no business with it, but it can see plainly that the opinion of the 28th Kansas does not fit the findings of this case, and must conclude not only that the court is in error when it says that "the case is the same," but also that if it be the same the court wrote a very absurd opinion up-

on it, utterly ignoring the findings of fact, and commenting on facts that were not in the case.

Plaintiffs in error now bring this case here and raise the same question of law under their assignments of error from 1 to 7 inclusive, presenting the proposition "*That the special findings of fact by the trial court do not sustain the conclusions of law and the judgment.*"

The plaintiffs in error did not move in this court to have surplus matter eliminated from the record because we were afraid of the record, but only because we dreaded the expense, and thought much of it unnecessary. The defendants in error demanded that the whole be printed, and the court denied the motion to eliminate—and now that it is all printed we are anxious that the court should make some use of it.

The record of the bankrupt proceedings upon which the title of plaintiffs in error is founded, is found in full from page 151 to 203 of the record, and I think it will be difficult to find any substantial reason why the assignee's deed made in pursuance of those proceedings does not convey all the title that Joseph E. Snyder had in 1871 to the lands mentioned in the deed.

The title bond of James to Gladden, and by him assigned to Snyder—for the benefit of Snyder—is the substrata of the title to Snyder as finally located to him by James in 1869 by ratification of the *carte blanche* deed dated 1834, but filled in in 1868, which ratification is endorsed on said title bond in writing by James in 1868, (see page 614 of the record, and findings of fact Nos. 1 and 2,) and the contemporaneous exchange of the location of 1864 for the location of 1869—referred to in finding 30 and discussed by Justice Brewer in

his opinion in the 28th Kansas, page 839—all taken together show conclusively the property sold was in fact bankrupt assets; and whether it was or not, under Justice Miller's opinion in Federal Reporter, quoted at pages 5, 6 of this brief, the sale of the property in 1871 as bankrupt assets, was binding on Snyder and all claiming under him. What more do we want, or what more can we say, to convince this court that a great wrong has been done, and apparently countenanced by the State courts in undertaking to undermine a title so well grounded in law and equity.

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The possession taken by the grantors of plaintiffs in error of the lands in controversy, and ever since maintained according to finding of fact No. 19, and the record of the bankrupt deed and the records of the bankrupt court, as Justice Miller says, put the defendants in error (plaintiffs below) on notice of everything that had been done in the bankrupt court, and "*The face* of the record," which Justice Brewer says on page 842 of 28 Kansas, "*is against it*," is not the record that controls. That, is only the record of matters of evidence which might have been, and probably were, considered by the bankrupt court when the decree of sale was made, which Justice Miller speaks of as binding Snyder and all who claim under him.

"The face of the record," which apparently is so confidently relied on by defendants in error, is nothing more than the self-serving testimony of Snyder, a concealing bankrupt, created by himself while he was attempting a fraud, as the findings of the trial court show. See findings of fact Nos. 9, 10, 11, 12, 13, 29, 30.

And such a record is no proof whatever that Snyder

did not have other title papers, long before that time, out of which grew the rights to the property only finally definitely and correctly located to the satisfaction of all parties in 1869.

But if we consider that these rights were first located under the deed which erroneously bore date in 1864, because of the ratification of James in 1869, (page 840, 28 Kansas,) and immediately thereupon as a part of the same transaction, really, the location of 1864, was exchanged for that of 1869, and the bankrupt court seized and sold the new location as bankrupt assets, under a decree in bankruptcy. What is the difference? —one is tweddledum and the other is tweeddledee—and in either event, the property is bankrupt assets.

But there is still another view, a glimpse of which the court should take; and that is that the location of 1864, actually made in the Fall of 1868, (see findings 28, 29, 30,) is identically the same land as that of 1869 —if you reject the erroneous course: "north 28½ deg. west" from the call "commencing at a point north 28½ "deg. west 3604½ feet from the southeast corner of sec- "tion 11." &c. The first call in the deed, set out in finding of fact No. 6, page 625 of the record—and go entirely by the monument referred to in that deed, which is the Missouri River; for at that time, the Fall of 1868, the Missouri River was at its present bed, and the bank was a permanent monument, and the rectangle of the land described in that deed must have run back 871½ feet south 61½ degrees west 300 feet wide, which was sufficiently far to include the lands in controversy, and covered all of the location of 1869, mentioned in the deed of finding of fact No. 8.

It is a well established principle of law that natural

monuments like river banks, &c., control courses—and there being a call for the river bank, and a call for a line 871.2 feet south 61½ deg. west from there, those two calls will control an erroneous bearing, such as north 28½ deg. west, in the case given.

Or, at all events, if there was a slight inaccuracy of description in the deed of 1864, it is plain enough to see how it originated, and how the transaction of 1869, between James and Snyder, was designed not only to correct it, but also to lop off the east end of Snyder's attempted location, in order to relieve the complication with Joy & Co. See findings Nos. 3, 4, 5, 6, 7, 8, 28, 29, 30, 31.

Findings Nos. 22, 23, 24, classed by the trial court as findings of fact are in truth conclusions of law, as the court will readily see, and as such are erroneous; and all the findings of fact which refer to the attachment title, need not be considered, for the reason that the title went out of Snyder by the bankrupt proceedings, and there was nothing left for the attachment to act upon.

Concise Statement of Facts.

In 1867 Joseph E. Snyder was in the District Court of the Western District of Missouri duly declared a bankrupt on his own petition, such petition being in the usual form.

In 1868 he procured his discharge under said proceedings, no assets having been by him scheduled, except certain exemptions, consisting of tools in trade, wearing apparel and furniture.

Afterwards, in 1868 and 1869, certain deeds of the

lands in controversy from David E. James to said Snyder appear on the records of Wyandotte County.

In 1871 one Joseph L. Norman, holding a claim of some $7,000 against the bankrupt, on allegations of fraud against said Joseph E. Snyder, petitions the court to set aside the bankrupt's discharge, and Snyder is brought into court again on proper process. Thereupon the court issues an order of reference to Samuel L. Vose "that he proceed to ascertain what, if any, estate "of the bankrupt remains unadministered."

Snyder contests the matter on the ground that he does not owe the debt. The evidence of concealment upon which the court proceeded is not found in the record, except that the deed of 1869, conveying to Snyder the lands in controversy, is found on file with the papers of the case. After an investigation and hearing, the court issues an order setting aside the discharge of the bankrupt, and reinstating the case upon the docket as a case in bankruptcy, reciting in that order that "it "has come to the knowledge of the court that certain "property belonging to the estate of the bankrupt re-"mains unadministered," and Henry N. Ess appointed as assignee in place of Samuel L. Vose, resigned, is ordered to schedule the *same* according to law, and the claim of $7,000 is duly allowed against the bankrupt.

Ess, the successor in trust to Vose, presents and files the schedule as ordered, which schedule includes the land in controversy, and alleges that it belongs to the bankrupt estate.

The assignee then petitions the court for an order of sale of the property scheduled, as bankrupt assets, to sell the same at private sale.

The court on a hearing, and being fully advised,

204 grants the order, no objection or opposition thereto being made by Snyder, although a party to the proceeding. The sale is made to Byron Judd of six acres of land for something over $5,000. The land sold includes the land in controversy. The purchaser pays the consideration in money, and the assignee presents a report of the sale to the court for confirmation. The court confirms the sale, and orders a deed to be made to the
139 purchaser. The deed is made by the assignee as ordered by the court, reciting that the assignee in possession of the land conveys all the title of the bankrupt and of Joseph E. Snyder existing at the time of filing the petition in bankruptcy, and at the time of issuing the order of sale.

706 The purchaser and his grantees take actual possession of the land in the early Spring of 1874, and have remained in possession ever since.

No objection was made by Snyder to the proceedings subjecting this property to the payment of this $7,000 debt, called the Jaccard claim after the claim was allowed by the court.

The respondents now, after thirteen years claiming under Snyder by title derived subsequent to the bankrupt sale, question the title acquired by the purchaser at such sale on the ground that the property sold was not bankrupt assets, because the petition in bankruptcy was dated in 1867, and the evidence of property that Snyder filed after his discharge, was dated in 1869.

On the other hand, the complainants contend that notwithstanding the self-serving *evidence* of 1869, so easily procured by Snyder, that the bankrupt court, acting upon the *whole evidence* before it, found the property to be *bankrupt assets and ordered the same sold as such and confirmed the sale*, and that the proceedings *operated as an adjudication that the same was bankrupt assets* as against the party Snyder, and that notwithstanding the respondents may claim that the court erroneously so decided, yet that the same is "*res adjudicata*," and if not strictly *res adjudicata*, an estoppel arises against the respondents, and the title of the purchaser at said sale cannot now be questioned after a lapse of years of acquiescence.

FINDINGS OF FACT.

We here present in printed form the findings of fact above referred to, so far as they refer to the bankrupt title under which plaintiffs in error claim.

(These include Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19. Then follow up to 27, inclusive, findings referring only to the subsequent attachment title, under which defendants in error claim. Then 28, 29, 30, 31.)

The court finds the following conclusions of fact:

1. That in 1860 David E. James was the owner of the undivided three-eighths interest in a portion of what is known as Armstrong's Reserve, No. 1, and March 5, 1860, James executed to James Gladden a title bond for an undivided ten acres of this land, and described the premises as the west half of the southwest quarter of section eleven (11), and the east half of the southeast quarter of section ten (10), in township eleven (11), and being in the fork of the Kansas and Missouri Rivers in Wyandotte County.

2. That on the same day, said James Gladden, in writing, assigned and transferred this bond for a deed to one Henry R. Seegar for the nominal consideration of $1,000. But in fact without any consideration, and which assignment made by the said Gladden to the said Seegar was duly executed, acknowledged and proved by the said Gladden on March 6, 1860, and recorded in the proper register of deed's office of Wyandotte County, October 1, 1860, a copy of which bond and assignment is as follows:

"Know all men by these presents that I, David E. James, of the County of Wyandotte, and Territory of Kansas, do hereby bind myself, my heirs and assigns to convey unto James Gladden, his heirs and assigns, by a good and valid deed, one undivided ten acres of the west half of the southwest quarter of section No. 11 and of the east half of the southeast quarter of No. 10, in township No. 11, being in the forks of the Kansas and Missouri rivers, in the County of Wyandotte, K. T., and all consisting of one undivided ten (10) acres.

"It is hereby covenanted and agreed that the aforesaid conveyance shall be made at any time within one year from the date of this instrument. It is also agreed and understood that said conveyance is to be made subject to and in accordance with the terms and conditions of a certain mortgage given upon said real estate by said James to one Silas Armstrong, and which is recorded in the proper office of the County of Wyandotte, K. T.

"In witness whereof, I have hereunto set my hand and seal this 5th day of March, A. D. 1860.

"DAVID E. JAMES. [L. S.]

"Know all men by these presents, that the within named James Gladden in consideration of one thousand dollars to me in hand paid by Henry R. Seegar, the receipt of which I do hereby acknowledge, have bargained, sold, assigned and set over all my right, title, interest, claim, property and demand, whatsoever in and to the within bond, unto the said Henry R. Seegar and his assigns forever.

"In witness whereof, I have hereunto set my hand and seal, this 5th day of March, 1860.

"JAMES his x mark GLADDEN. [L. S.]"

"In the presence of:
"LOUIS B. SCOTT.
JOSEPH E. SNYDER."

"STATE OF MISSOURI, COUNTY OF JACKSON, ss.

"Be it remembered that on this 6th day of March, 1860, before me, John S. Hough, clerk of Kansas City Court of Common Pleas for Kaw township, in the County and State aforesaid, personally appeared James Gladden, who is well known to me as the person whose name is subscribed to the foregoing instrument of writing, and acknowledged the same to be his voluntary act and deed for the uses and purposes therein mentioned.

"In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in the City of Kansas on the day and date above written.

"[L. S.] JOHN S. HOUGH, Clerk,
"By Louis B. Scott, D. C."

"Recorded October 1, 1860, at 5 P. M.
"V. J. LANE, Register of Deeds,
"By James A. Cruise, D. R."

3. That on July 27, 1864, said David E. James executed and de-

livered to said Snyder an alleged blank deed, so called, in which the name of the grantee and description of any property were omitted, and authorized said Snyder to fill it up at such time as he might desire, with six acres on the bank of the Missouri River somewhere between the State Line and the mouth of the Kansas River.

4. That on January 23, 1867, Thomas Ewing, Jr., and others commenced an action in the District Court of Wyandotte County, against William Weer, Thomas H. Swope, David E. James and others, defendants, among which was the said Henry R. Seegar, for the purpose of obtaining a decree of partition of these premises, thus described in the petition in said action: "All that parcel of land lying "in the fork of the Missouri and Kansas rivers and between the Mis- "souri State line and the Kansas River as lies north of Turkey creek, "containing about two hundred and sixty acres, more or less;" and in this petition it was alleged that Henry R. Seegar and the other defendants were joint owners of certain of these premises, but in what particular part and proportion they severally owned and were seized was to the plaintiff then unknown.

5. That, afterwards, such proceedings were had in said action for partition in said court that there was assigned, allotted and decreed to David E. James a tract of forty-three and one-half acres of said premises.

6. That in 1868, while James was absent from this state, the said Joseph E. Snyder filled up the deed referred to in conclusion of fact number three by inserting his own name as grantee, and with a description of land by metes and bounds of six acres on the bank of the Missouri River, and filed the deed thus apparently complete for record in the office of the register of deeds for Wyandotte County, which alleged deed is in words and figures following:

"This indenture, made this 27th day of July, in the year of our Lord one thousand eight hundred and sixty-four, between David E. James and Jennie M. James, his wife, of the first part, and Joseph E. Snyder, of the second part;

"Witnesseth: That the said party of the first part, for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, his heirs and assigns forever, commencing at a point north 28½ degrees west 3604½ feet from the southeast corner of section 11,

township 11, range 25, in the County of Wyandotte, State of Kansas: thence south 61¼ degrees west 640 feet two inches (640 ft. 2 in.); thence south twenty-eight and a half (28½) degrees east three hundred feet (300); thence north sixty-one and a half degrees (61½) east eight hundred and seventy-one feet and two inches (871, 2); thence along the southwest bank of the Missouri River northward twenty-eight and one-half degrees (28½) west three hundred feet (300); thence south sixty-one and a half (61½) degrees west two hundred and thirty-one (231) feet to the place of beginning, containing six (6) acres. Together with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest and demand whatsoever of the said parties of the first part, either in law or in equity, of, in and to the above bargained premises with the hereditaments and appurtenances.

"To have and to hold the same premises as above described, with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

"In witness whereof the party of the first part have hereunto set hands and seals the day and year first above written.

"D. E. JAMES. [L. S.]

"JENNIE M. JAMES. [L. S.]

"Sealed and delivered in the presence of:

"F. L. PARKER.

"TRACY W. ROOT.

"STATE OF MICHIGAN, WASHTENAW COUNTY, SS.

"On this 2d of August, A. D. 1864, before me, the subscribed, clerk of the Circuit Court of Washtenaw County aforesaid, personally appeared David E. James and Jennie M. James, to me personally known to be the identical persons described in and who executed the within conveyance. and acknowledged the instrument to be their own voluntary act and deed. And the said Jennie M. James, on an examination apart from her said husband, having been first made acquainted with the contents of such conveyance, acknowledged that she executed the same and relinquished her dower in the real estate therein mentioned freely and without any fear or compulsion of her said husband.

[Seal.] "TRACY W. ROOT, Clerk."

"Recorded October 23d, A. D. 1868. at 9 A. M.

"JAMES A. CRUISE, Register of Deeds."

7. That on the 12th day of April, 1869, Snyder conveyed this property back to James, a copy of which deed, with certificate of acknowledgment and record in the office of the register of deeds is as follows:

"[U. S. Revenue Stamp, 50 cents.]

"This indenture, made this 12th day of April, in the year of our Lord one thousand eight hundred and sixty-nine, between Joseph E. Snyder and Teressa Snyder, his wife, of the first part, and David E. James, party of the second part;

"Witnesseth: That said party of the first part, in consideration of the sum of one dollar to them duly paid, do by these presents grant and convey to said party of the second part, his heirs and assigns, all that tract or parcel of land situate in the County of Wyandotte and State of Kansas, and described as follows, to-wit:

"Commencing at a point north 28½ degrees west 3604½ feet from the southeast corner of section 11, township 11, range 25, in the County of Wyandotte and State of Kansas; thence south 61½ degrees west 640 feet two inches (640, 2); thence south 28½ degrees east 300 feet; thence north 61½ degrees east 871 feet two inches; thence along the southwest bank of the Missouri river north 28½ degrees west 300 feet; thence south 61½ degrees west 231 feet to the place of beginning —containing six (6) acres, with the appurtenances and all the estate, title and interest of the said party of the first part therein.

"And the said Joseph E. Snyder and Teressa, his wife, do hereby covenant and agree that at the delivery hereof, they are the lawful owner of the premises above granted, and seized of a good and indefeasible estate of inheritance therein, and that they will warrant and defend the same in the quiet and peaceable possession of said parties of the second part, their heirs and assigns forever.

"In witness whereof the said party of the first part have hereunto set their hands and seals the day and year above written.

"JOSEPH E. SNYDER. [Seal.]
TERESSA SNYDER. [Seal.]"

"Executed and delivered in the presence of:
C. MOHR."

"STATE OF MISSOURI, COUNTY OF JACKSON, ss:

"On the 14th day of April, A. D. 1869, before me, clerk of the Kansas City Court of Common Pleas in and for said County, came Joseph E. Snyder and Teressa Snyder, his wife, who are personally known to be the same persons who executed the foregoing instrument, and duly acknowledged the execution of the same.

"In testimony whereof I have hereunto subscribed my name and affixed my official seal the day and year last above written.

[Seal.] "C. H. VINCENT, Clerk."

"Recorded July 1st, A. D. 1869, at 9 A. M.

"JAMES A. CRUISE, Register of Deeds."

8. That on the 13th day of April, 1869, the said David E. James and wife executed, made, acknowledged and delivered to Joseph E. Snyder the following deed, which was recorded in the office of the register of deeds at the time hereinafter mentioned, to-wit:

"[U. S. Revenue Stamp, 50 cents.]

"This indenture made this 13th day of April, in the year of our Lord one thousand eight hundred and sixty-nine, between David E. James and Jennie M. James, his wife, of the first part, and Joseph E. Snyder, party of the second part, Witnesseth;

"That the said party of the first part in consideration of the sum of one dollar to them paid, have sold, and by these presents do grant and convey to the said party of the second part, his heirs and assigns all that tract or parcel of land situate in the County of Wyandotte, and State of Kansas, and described as follows, to-wit: (Var. 11 degrees east), beginning at the S. W. corner of a tract of land conveyed by said James to one James F. Joy and now known as railroad land, said S. W. corner being the N. W. corner of a certain parcel of land now owned by said James; thence running south 61 degrees 50 min. west (580 and 8-10) five hundred and eighty and eight-tenths feet; thence south 28 degrees 10 min. east 300 feet; thence north 61 degrees 50 min. east 580 and 8-10 feet, thence north 28 degrees and 10 min. west 300 feet to the place of beginning, and all to contain four (4) acres, the said land being in township 11, range twenty-five (25) in the above named County and State.

"This conveyance is made subject to the claim of a mortgage of fifty dollars per acre given to Silas Armstrong by said James, also subject to the claim of one hundred and twenty-five dollars due to C. F. Welland, due on or before May 12, 1869, with interest at the rate of ten per cent per annum; also taxes now due upon said above described land amounting to $17.50, more or less, with the appurtenances and all the estate and title and interest of the first party therein: and the said David E. James and Jennie M., his wife, do hereby covenant and agree that at the delivery hereof they are the lawful owner of the premises above granted and seized of a good and indefeasible estate of inheritance therein; that they will warrant and de-

fend the same in the quiet and peaceable possession of said party of the second part, his heirs and assigns forever.

"In witness whereof, said parties of the first part have hereunto set their hands and seals the day and year above written.

"D. E. JAMES. [Seal.]
"JENNIE M. JAMES. [Seal.]"

"Executed and delivered in the presence of:

GEORGE B. WOOD,
E. B. BOND, and
G. R. PORTER for Mrs. James."

"STATE OF KANSAS, COUNTY OF WYANDOTTE, ss.

"On the 13th day of April, A. D. 1869, before me, a notary public within and for said County, came David E. James, to me personally known to be the same person who executed the foregoing instrument and acknowledged duly the execution of the same.

"In testimony whereof, the day and year last above written, I have hereunto subscribed my name and affixed my official seal. All interlineations made before signing.

"M. B. NEWMAN, Notary Public. [Seal.]"

"STATE OF MICHIGAN, COUNTY OF WASHTENAW, ss.

"On this 17th day of April, A. D. 1869, before me, the county clerk in and for said County, came Jennie M. James, to me known to be the same person who executed the foregoing instrument and duly acknowledged the execution of the same.

"In witness whereof I have hereunto subscribed my name and affixed my official seal the day and year last above written. All interlineations made before signing.

"JOHN J. ROBISON, Clerk. [Seal.]

"[U. S. Revenue Stamp, 5 cents.]"

9. That on December 2, 1867. the said Joseph E. Snyder filed in the United States District Court for the Western District of Missouri, his voluntary petition in bankruptcy, and in his schedule of property filed therewith, Snyder sets forth that he possessed no other property than his tools and implements of trade and certain exempt articles of household furniture.

10. That said Snyder was, on said 2d day of December, 1867, when he filed his voluntary petition in bankruptcy, the holder and owner of the title bond described in the conclusion of fact No. 1, and did not disclose said bond or blank deed to the bankruptcy court or his assignee, and concealed the said paper from his said assignee and his creditors, and all knowledge of his interest in said land, if any he

had, and procured from said District Court of the United States for the Western District of Missouri, his discharge in 1868, without scheduling said real estate.

11. That after the said Snyder had procured his said discharge in bankruptcy from said court the said creditors of said Snyder begun proceedings in said court to set aside the discharge of said Snyder on the ground that the said Snyder had fraudulently concealed from said court, his assignee, and creditors the assets belonging to his said estate and of which said proceedings and application to set aside his discharge in bankruptcy, the said Snyder was duly notified, and appeared in said court to and answered to said proceedings; that it was alleged by said creditors, in said proceedings, that the following lands and tenements belonged to the estate in bankruptcy of said Snyder, viz:

"Beginning at a point north 28 1-2 degrees west distance 3604 1-2 feet from the southeast corner of section eleven (11), township 11, south range 25, east of the sixth principal meridian, in the State of Kansas, on the northwardly line of James street, extended, as shown by the plat of Kansas City, Kansas, now on file in the office of the register of deeds in Wyandotte County, Kansas, on page 9 of the Book of Plats, filed on the 3rd day of May, 1869, by D. E. James and others; thence south 61 1-2 degrees west 640 feet 2 inches; thence south 28 1-2 degrees east 300 feet; thence north 61 1-2 degrees east 640 feet 2 inches to the said northwardly line of said James street, extended; thence north 28 1-2 degrees west on said northwardly line of James street, three hundred feet, to the beginning, containing four (4) acres, more or less, and also a piece of land described as follows: Beginning at the same point as above described, thence north 61 1-2 degrees east to the Missouri River; thence down along said river south 28 1-2 degrees east 300 feet; thence south 61 1-2 degrees west 231 feet to the northwardly line of said James street, extended; thence north 28 1-2 degrees west to the beginning, containing two (2) acres, more or less."

12. That afterwards, by the consideration of said the District Court of the United States for the Western District of Missouri, on the hearing of said proceedings it was ordered and decreed that the said discharge in bankruptcy of the said Snyder be, and the same was set aside by said court, and it was further ordered by said court that the assignee in said court file a complete schedule of all the property belonging to the estate of said bankrupt Snyder remaining yet undisposed of.

13. That afterwards, on August 19, 1871, the said assignee in bankruptcy filed a schedule of property belonging to the estate of said bankrupt, and which schedule described the following property, only, viz:

"No personal property found. The said bankrupt owns the following described real estate, situated in Kansas City, Wyandotte County, Kansas, and bounded as follows:

"Beginning at a point north 28 1-2 degrees west distant 3604 1-2 feet from the southeast corner of section eleven (11), township eleven (11), south range twenty-five (25), east of the sixth principal meridian, in the State of Kansas, on the northwardly line of James street, extended, as shown by the plat of Kansas City, Kansas, now on file in the office of the register of deeds, office in Wyandotte County, Kansas, on page 9 of the Book of Plats, filed on the 3rd day of May, 1869, by D. E. James et al.; thence south 61 1-2 degrees west 640 feet 2 inches; thence south 28 1-2 degrees east 300 feet; thence north 61 1-2 degrees east 640 feet 2 inches to the said northwardly line of James street, extended; thence north 28 1-2 degrees west on said northwardly line of James street 300 feet to the beginning, containing four (4) acres, more or less."

"And also a piece of land described as follows:

"Beginning at the same point above described; thence north 61½ degrees east to the Missouri river; thence down along the said river south 28½ degrees east 300 feet; thence south 61½ degrees west 231 feet to the northwardly line of said James street, extended; thence north 28½ degrees west 300 feet to the beginning, containing two acres, more or less."

14. That on August 24, 1871, the Court made an order directing the assignee in bankruptcy to appraise said premises according to law and sell the same at public or private sale as he might desire for the best interests of the creditors.

15. That afterwards, on October 12, 1871, the said assignee in bankruptcy reported to said Court in writing that he had sold said premises to B. Judd for the sum of $5,120.

16. That afterwards, on the 14th day of October, 1871, the said Court, having been fully advised in the premises, approved and confirmed said sale, and made an order directing the said assignee in bankruptcy to make, and deliver to said purchaser a deed of conveyance for said premises.

17. That afterwards, on the 20th day of October, 1871, assignee in bankruptcy made and delivered to said Byron Judd a deed of con-

veyance for said premises, in obedience to the said order of the said District Court of the United States for the Western District of the State of Missouri, and that said deed contained the following described premises, viz:

"Beginning at a point north 28½ degrees west 3604½ feet from the southeast corner of section 11, township 11, south of range 25, east of the 6th principal meridian on the northwestwardly line of James street, extended, as shown by the plat of Kansas City, Kansas, on file in the register of deeds' office of said County of Wyandotte, page 9 of the Book of Plats, filed on the 3d day of May, A. D. 1869, by David E. James and others; thence south 61½ degrees west 640 feet 2 inches; thence south 28½ degrees east three hundred feet; thence north 61½ degrees east 640 feet 2 inches to the said northwestwardly line of James street, extended; thence north 28½ degrees west on said northwestwardly line of James street, extended, three hundred feet to the beginning, containing four (4) acres, more or less. Also beginning at the same point as last above, and thence north 61½ degrees east to the Missouri river; thence down along said river south 28½ degrees east 300 feet; thence south 61½ degrees west 231 feet to the northwardly line of said James street, extended; thence north 28½ degrees west 300 feet to the beginning, containing two (2) acres, more or less."

And the said deed was duly executed, acknowledged, certified, delivered and recorded on the 27th day of October, 1871, in the office of said register of deeds, in Wyandotte County, Kansas, in Book Q, pages 189, 190 and 191.

18. That the defendant, Nicholas McAlpine, and the other defendants herein, claim under the said Byron Judd, by a regular chain of conveyance through said Byron Judd and his assignees and grantees, succeeding the said bankrupt title, which is a matter of record in the register of deeds' office of Wyandotte County.

19. That said parties, the defendants, have been in the actual possession of the land in controversy ever since the early spring of 1874, and held such possession and had a tenant living as actual occupant on the four-acre tract of land above described, which is located on the westernly side of James street, from the early spring of 1874 and down to the time the said Nicholas McAlpine purchased the same in the year 1879, and said tenant was an actual occupant upon the said land at the time the attachment under which said plaintiffs claim title was issued and attempted to be levied upon the land in controversy.

(Then follow up to 27, inclusive, findings referring only to the subsequent attachment title under which defendants in error claim.) Then—

28. That in the fall of 1868 the owners of the land in said fractional sections 10 and 11, to prevent the washing away of the lands adjoining the Missouri river by the current thereof, entered into an agreement with James F. Joy, representing the Hannibal and St. Joe Railroad Company, to donate lands along the river bank in consideration that said company would rip-rap the bank of said river with rock to preserve the lands, and accordingly D. E. James and others of the owners deposited deeds in escrow to be delivered to said James F. Joy on the completion of said rip-rapping, and the said railroad company entered upon the prosecution of the work.

29. After the said arrangement with Joy and Company, and after Snyder had obtained his discharge in bankruptcy, the said Snyder, while the said James was absent from the state and was in the State of Michigan, filled in the blank deed or instrument mentioned in finding No. 2, a description of the premises therein described, and also inserted his own name as grantee, as hereinbefore stated in conclusion of fact No. 6.

30. That afterwards, said David E. James, on his return from the State of Michigan, learning that the said Joseph E. Snyder had filled in said deed his own name as grantee, and the description of the land described in said deed in conclusion of fact No. 6, expressed his dissatisfaction with the description of the property, and by mutual agreement between said David E. James and Joseph E. Snyder, said Snyder and wife made and executed the deed dated April 12, and acknowledged April 14, 1869, referred to and set forth in conclusion of fact No. 7, in exchange for the lands described in the deed mentioned in finding of fact No. 8.

31. That said James F. Joy, or the railroad company for whom he was acting, complied with and carried out the agreement for rip-rapping the bank of the Missouri river, referred to in conclusion of fact No. 28, and received deeds for the lands along the bank of said river from the owners of the lands in said fractional sections Nos. 10 and 11 aforesaid.

To the findings of each of the foregoing conclusions of fact, the

plaintiffs and defendants each separately object and except, and still object and except.

The findings of fact proper were all in favor of the defendants below, plaintiffs in error; but the court found all the conclusions of law in favor of plaintiff below, defendants in error. That was the court's idea of justice—to give all the fact to one party and all the law to the other.

The objections and exceptions to the conclusions of law were fully presented in the record by plaintiffs in error.

JAMES M. MASON,
Counsel for Plaintiffs in Error.

Conclusions of Law.

There are six conclusions of law by the trial court in the record immediately following these findings of fact, and all of them startlingly erroneous.

The first one reads:

"I. That the title bond made by David E. James to "James Gladden and by him assigned to Henry R. See- "ger and held by the said Joseph E. Snyder, did not "vest in the said Snyder any title, legal or equitable, in "the premises described in the plaintiff's petition."

Finding of fact No. 10 recites that Snyder was the *owner* of that title bond, and concealed his *interest* therein, and for that reason his discharge was set aside. Findings 11, 12.

Findings Nos. 1 and 2 set forth the title bond, and show that James thereby agreed to convey an undivided ten acres in all that bottom land of which afterward the lands in controversy formed a part—an undivided ten acres out of about 240 acres. It did then vest in the owner of that title bond an equitable title to an undivided interest in the lands in controversy. That interest spread all over every acre of that 240 acres, and of course vested on each and every part of it, and the conclusion of law No. 1 is so manifestly erroneous, and shows such a want of knowledge of the force of that title bond, that it cannot fail to arrest the attention of this court.

If Snyder owned the title bond he certainly owned the

interest that it conveyed, and which was an undivided ten acres out of 240 acres, of which the lands in controversy form a part, at the time when it was made, and so stood matters until 1864, when other papers were made, intended to more fully provide for the interests of Snyder under the title bond of 1860. Snyder procured a deed of six acres in lieu of the ten mentioned in the title bond, and it was located in 1869, and Justice Brewer says the location was ratified, and then, instantly, as a part of the same transaction, a deed was made reciting the same words of that location, describing a rectangle of land running back 871.2 feet from the *then* bank of the Missouri River, in the direction of south 61½ deg. west—six acres of land—conveying the location back to James; and then, as a part of the same transaction, James made a deed to Snyder of 4 acres, which was really the westerly 4 acres of the location above mentioned, and certainly the westerly 4 acres of identically the same land that was conveyed to James by Snyder. See finding of fact No. 7, and findings of fact 1, 2, 3, 4, 5, 6, 7, 8.

Conclusion of law No. 2:

"That the deed described in conclusion of fact No. 3, "did not vest in the said Snyder any title legal or equit-"able in the premises described in the plaintiff's peti-"tion."

We say it did, when it was ratified in 1869, for it never got its second delivery till then, and it only took effect from the time it was made, which was not until the Fall of 1868, and treating the angle of 28½ degrees west as before mentioned an error, and relying on the monument of the river, which must govern course, and considering the new deed of Snyder back to James,

which followed identically the same language of description, which new deed was dated in 1869, and must have reference to the river as it then stood, and been based on its present banks,—there is no doubt but that Snyder and James supposed, believed and intended that *that* land all of it in each of the deeds was the same as the land in controversy—or extended far enough west to cover it—and if the deed bearing a fictitious date of 1864 had a wrong angle, so did the deed of Snyder back to James of 1869.

One proposition settles the whole matter—and that is that monuments control courses. The same proposition has to be applied in construing the bankruptcy proceedings and the bankrupt deed—but the monuments in the bankrupt deed are the river, and the street also, making two monuments.

There is no doubt but that if a surveyor will go to that land now, or if he had gone there in 1869 or Fall of 1868, even, and lay out a rectangle of land fronting 300 feet on the Missouri River front, and running back south 61½ deg. west 871.2 feet, he will go far enough southwest to take in all the land in controversy, and go in fact beyond what is necessary by fifty feet, and such rectangle will practically include all of the lands in controversy; and that is what Justice Miller, of the Supreme Bench means when he says in the opinion above cited, that the description in the bankrupt deed was a "very minute description," "So that it might be said "that a surveyor could take his compass and the des- "cription and go and lay off the land exactly."

See 24 Federal Reporter, page 71.

And in the same opinion he says: "The schedule of

"property which the assignee presented, and for which "he asked an order of the court that he might sell it, "differs in some respects in its description, though it is "probable that it was intended to be the same as that "which is mentioned in the proceedings to set aside his "discharge." See finding of fact No. 11. "But the des-"cription brought forward by the new assignee in his "additional schedule, is a very minute description, and "says no more than that it was his property, and gives "its description by metes and bounds, which were "somewhat complicated."

Page 70 of 24 Fed. Rep., in connection with findings 13-17.

If, then, this land in the bankrupt deed and proceedings be the same land "as that mentioned in the pro-"ceedings to set aside his discharge," it is the same land as that mentioned in the deed referred to in findings of fact Nos. 3 and 6, which is the same land as that mentioned in the deed set out in finding No. 7,—of Snyder back to James,—and is substantially the same land as the land mentioned in the deed found at finding No. 8, except that the deed at finding No. 8 leaves out the easterly two acres of the six, and conveys only four off the west end of the six, and which four includes the lands in controversy—and the same land as the land described in the bankrupt proceedings and deed mentioned in findings No. 11, 12, 13, 14, 15, 16, 17, 18.

All these, though in some particulars inaccurate, still were, as between the parties, intended beyond a doubt. to describe the same lands now in controversy with other lands.

Hence conclusion of fact No. 2 must be erroneous, for Snyder did have an equitable interest in the land in

controversy when James ratified the deed mentioned at No. 6, for though the angle was wrong, the bearing 28½ deg.; yet the monument of the Missouri River sufficiently disclosed where the land commenced, and the distance given of 871.2 feet made it certain how far back from the *then* river the rectangle of land (not water) ran to include the six acres called for. If there was a blunder in the date of the deed, or the angle of the bearing for the commencing point, that did not deprive Snyder of his equities after the ratification of 1869, and conclusion of law No. 2 is wrong.

But conclusion of law No. 3 reads:

"3. That on December 2, 1867, when the said Sny-
"der filed his petition in bankruptcy in the District
"Court of the United States for the district of Missouri,
"the said Snyder was not the owner of the legal or
"equitable title, or any estate in the premises described
"in plaintiff's petition."

For the reasons given above in conclusions No. 1 and 2, Snyder, even at the time of filing his petition, December 2, 1867, was the owner of an interest in the lands in controversy. If that interest was not fully located *then*, then it was an undivided interest, but certainly an interest, and the conclusion is erroneous for this reason, if for no other.

But if the deed mentioned and set out in finding of fact No. 6, when filled in in the Fall of 1868 and ratified in April, 1869, was intended, though by a mistaken date or description, to be the six acres of land which afterwards by a corrected description appeared in the bankrupt proceedings and in the corrective deeds of April, 1869; from Snyder to James and from James to Snyder, set forth in findings Nos. 7 and 8,—as was

thought by Justice Miller, and which the logic of events which transpired fully proves, since it is impossible to conceive that Snyder, in attempting to locate to himself six acres of land fronting on the Missouri River would have intended to have located to himself four acres of *land* and two acres of Missouri River *water*, as defendants in error assert. It must be that even in 1867, at the time of filing his petition in bankruptcy, Snyder had an interest in the lands in controversy, under, through and by the muniments and evidences of claim of title which he then held, and which findings Nos. 9, 10, 11, 12, show that he concealed from his creditors. If he concealed his interest, what interest was it that he concealed? It was either an undivided or floating interest, with the right to have the same located, or it was located. If it was located it was located right where it is now, for not until this partition suit of Ewing et al. vs. Wier et al., commenced January 23, 1867, (see finding of fact No. 4,) were the lines upon which were based the said partition—and the description inserted by Snyder in his *carte blanche* deed ever conceived or thought of—proving conclusively that he drew that description from the lines of the survey in that partition suit—and had reference to the land and the banks of the Missouri River as it stood at the time the deed was filled in, in the Fall of 1868—and could not have been filled in or located in 1864, for in 1864 those lines were not keown or established. The deed only taking effect as a deed from its second delivery or ratification in the Fall of 1868 or in 1869. was not a deed until then. Yet, from the fact that when ratified the deed would seem to relate back to its date of 1864, there might have been an error in the description if so considered. Therefore, the

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transaction of 1869 between James and Snyder merely made plain what had been before the intention of the parties all along from the first: that Snyder should have six acres of *land* there, somewhere, in lieu of the ten acres coming to him under the title bond of 1860, or in view of the wasting away of the eastern bank of the land from the rise in the Missouri River, *four*, as a final settlement for his entire claim in the bottom. The two acres on the river front being given to Joy & Co. as a river necessity, to pay for the riprapping and protection of the whole, (see findings Nos. 28, 29, 30, 31, and see record in partition suit, page 49 to plat, page 56, and plat of Kansas City, Kansas, near page 66 of this record.)

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The question then recurs why did we not get the title to this land in the bankruptcy court? The only reason assigned by defendants in error is, because we did not get the bankrupt court to make a finding that it was bankrupt assets; that that question was not tried in this bankrupt proceeding, but Mr. Justice Miller, in his opinion above cited, says: "This matter was set up "in that proceeding; that he did own this land; and that "was tried in that proceeding, and his (Snyder's) dis-"charge was set aside on that ground," &c.

The Supreme Court of the State of Kansas tells us in the 28th Kansas that nothing was decided in the bankrupt court; that the question of assets was still an open one. We sought the Circuit Court of the United States to get it to decide the only federal question which we were told was still left undecided, and when we got there we presented the bankrupt record just what we present here and no more, and were told by that court that the question had been decided, and

thought by Justice Miller, and which the logic of events which transpired fully proves, since it is impossible to conceive that Snyder, in attempting to locate to himself six acres of land fronting on the Missouri River would have intended to have located to himself four acres of *land* and two acres of Missouri River *water*, as defendants in error assert. It must be that even in 1867, at the time of filing his petition in bankruptcy, Snyder had an interest in the lands in controversy, under, through and by the muniments and evidences of claim of title which he then held, and which findings Nos. 9, 10, 11, 12, show that he concealed from his creditors. If he concealed his interest, what interest was it that he concealed? It was either an undivided or floating interest, with the right to have the same located, or it was located. If it was located it was located right where it is now, for not until this partition suit of Ewing et al. vs. Wier et al., commenced January 23, 1867, (see finding of fact No. 4,) were the lines upon which were based the said partition—and the description inserted by Snyder in his *carte blanche* deed ever conceived or thought of—proving conclusively that he drew that description from the lines of the survey in that partition suit—and had reference to the land and the banks of the Missouri River as it stood at the time the deed was filled in, in the Fall of 1868—and could not have been filled in or located in 1864, for in 1864 those lines were not keown or established. The deed only taking effect as a deed from its second delivery or ratification in the Fall of 1868 or in 1869. was not a deed until then. Yet, from the fact that when ratified the deed would seem to relate back to its date of 1864, there might have been an error in the description if so considered. Therefore, the

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transaction of 1869 between James and Snyder merely made plain what had been before the intention of the parties all along from the first: that Snyder should have six acres of *land* there, somewhere, in lieu of the ten acres coming to him under the title bond of 1860, or in view of the wasting away of the eastern bank of the land from the rise in the Missouri River, *four*, as a final settlement for his entire claim in the bottom. The two acres on the river front being given to Joy & Co. as a river necessity, to pay for the riprapping and protection of the whole, (see findings Nos. 28, 29, 30, 31, and see record in partition suit, page 49 to plat, page 55 56, and plat of Kansas City, Kansas, near page 66 of this record.)

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The question then recurs why did we not get the title to this land in the bankruptcy court? The only reason assigned by defendants in error is, because we did not get the bankrupt court to make a finding that it was bankrupt assets; that that question was not tried in this bankrupt proceeding, but Mr. Justice Miller, in his opinion above cited, says: "This matter was set up "in that proceeding; that he did own this land; and that "was tried in that proceeding, and his (Snyder's) dis-"charge was set aside on that ground," &c.

The Supreme Court of the State of Kansas tells us in the 28th Kansas that nothing was decided in the bankrupt court; that the question of assets was still an open one. We sought the Circuit Court of the United States to get it to decide the only federal question which we were told was still left undecided, and when we got there we presented the bankrupt record just what we present here and no more, and were told by that court that the question had been decided, and

that "there was no place for equity to interfere about it," found that:

The bankruptcy court was a court of equitable summary jurisdiction, capable, as between the parties to this proceeding, of deciding by way of direction, every question of legal or equitable interest that could be contentiously discussed for opposing interests.

Est. Franklin Sav. Fund, reported in 10 Philadelphia.

See Bump on Bankruptcy, under Jurisdiction on Summary Petition.

The proceedings all stand, however numerous they may be, on the original petition filed by the bankrupt asking the bankrupt court to administer his assets, and it must be said that really the bankrupt did it himself by the hand of the bankrupt court, whose jurisdiction he had invoked.

Why, then, is he not bound and estopped by his silence and acquiescence in anything that he stands by and sees done without objection, and how can it be said that what is done can be attacked collaterally by a third party, when the bankrupt so chooses to submit his property to the payment of his debts?

Then Snyder did certainly in some form have interests in the land in controversy in 1867.

But if he did not have a full legal and perfect title to the subsequently corrected location of 1869, it makes no difference, for the defendants concede that the first location under the deed set out in finding six was bankrupt assets; and finding No. 30 finds that this was given in lieu or in exchange for the deed mentioned in finding No. 8. The property mentioned in finding No. 7

being intended and supposed to be the same property mentioned in finding No. 6, though the deeds bear different dates—yet the land mentioned in the one intended and supposed to be identical with the land mentioned in the other description of 1869, in No. 7, being a conveyance back to James of what James had, in 1869, ratified as having been conveyed to Snyder—thus with the deed of finding No. 8, merely amounting to an effort to straighten out things, relieve the complications with Joy & Co., and settle Snyder's location to the satisfaction of all parties.

And then the bankrupt court in 1871 took hold of this property and sold it under a description sufficiently broad to convey it—and something more, it is true—but that does not hurt; the description is ample to convey the land in controversy, and because it is broad enough to convey also lands to which Snyder really had no claim, and which had passed from James to Joy by the sale and riprapping contract set forth in findings 28, 29, 30, 31, and which the assignee could by no equity ever have acquired under all the circumstances.

Plaintiffs below, defendants in error, nor their grantors, never were in possession of the river frontage lands, though holding always since the early Spring of 1874, actual possession of the lands in controversy.

And Justice Miller, in the 24th Federal Reporter, holds that the proceedings in the bankrupt court bound Snyder and those attachment-sale purchasers, and that the bankrupt-sale purchaser got at that bankrupt sale all the title Snyder had in that property described in the bankrupt deed at the date of the decree and sale in 1871, and there is really nothing to talk about.

It is true, however, that the Supreme Court of the

State of Kansas has said in this case that once one is two—but that does not make it so.

It has said that nothing was decided in the bankrupt court, but Justice Miller *says there was—and that the purchaser got at that bankrupt sale whatever title Snyder had to the lands described in that deed and in that sale as it stood in 1871, at the date of the decree and sale.*

If Snyder had any exemptions which he was entitled to claim, he was before the court and it was litigated or might have been litigated there—and if it was not, it was Snyder's matter and Snyder's privilege to waive his exemptions, if he had any—and it was settled forever, and it would be impossible to claim it now—and those attachment-sale purchasers can have no greater rights than Snyder, and even not as much, as the right to an exemption is a personal privilege—and no one can move in this matter but Snyder in person. It is his privilege if he suffers his exempt property to be used to pay his debts, his subsequent creditors have no right to object. They are standing on very flimsey ground, even if there was ever anything in it—on a right of a creditor of a debtor to claim a debtor's exemption 10 years after he has waived it, and the property has gone into the hands of other parties by purchase. There is therefore nothing in it, even if there was ever anything it it —and sages will ponder, and wise lawyers and learned judges will speculate, how the Supreme Court of the enlightened State of Kansas ever came to render the opinion in Wilkins vs. Tourtellott, found in 42 Kansas, page 176. And my own law student, in my own office, in open-mouthed wonder asks: "how can you expect to "win this case when all the State courts have found

"against you? when so much wisdom is arrayed to de-
"defeat you?"

I tell him I never believe anything until I have reason to believe it. I still hope to find some judge who has as much sense as I have. That I do not believe once one is two, because the Supreme Court of the State has said so, nor because there is a superficial theory to sustain it; and I still hope to find some court—some clear-headed lawyer on the bench honest and courageous enough to speak out and say that it is not so.

One already, at least, has struck the key-note of this case.

I am not entirely alone in the opinion I hold in regard to this case.

May the shades of the departed Justice Miller come to my aid, and invoke the sense of justice and reason of this court!

He is dead, but he has left the evidence of his strong good sense behind him, an opinion clear, logical, penetrating every darkened labyrinth of this case, and standing out upon the darkened background of error in letters of living light, are the burning words of his opinion:

"That he, Snyder, was still a party to the proceeding; that if he got
"any better or different title from the time that he went into bank-
"ruptcy to the time that the judicial sale was made, that that title
"inured to the benefit of the purchaser; that such legal title as was
"in him on the records of the Register of Deeds' office was sold
"and bought by these parties, if covered by the description, and no
"more; that they took what they bought in that description in their
"deed and in their sale, and they take such title as Snyder had to it
"at the date of the decree, and that there is no place for chancery to
"interfere about it.

"These parties, the present defendants, (now these defendants in er-

"ror,) are purchasers subject to all these transactions; they are all "purchasers subsequent to the decree setting aside his discharge; "they are all subsequent to the decree of sale; they are all subsequent "to the sale and making and recording of the deed; they are all pur- "chasers with notice of what was done in the bankruptcy court, and "as that bound Snyder, that bound them."

How the trial court could have ever drawn such conclusions of law from the findings of fact has always been a puzzle to lawyers. But it is equally a matter of wonder how, in view of those findings of fact, the Supreme Court could fail to reverse the case.

If any good reason is ever discovered we shall be wiser than we now are.

The grantors of defendants in error who procured such attachment proceedings to be instituted and bid in the said lands at the attachment sale that resulted therefrom in satisfaction of the debt they represented in 1874, are substantially the same parties who procured the same lands to be subjected to these bankrupt proceedings—in order to satisfy their debt of some $7,000, known as the Jaccard claim—and then appropriated the proceeds of said bankrupt sale to the payment of that claim in 1871, which they held when the proceedings to set aside Snyder's discharge in bankruptcy were commenced, and were parties and privies to the bankrupt sale as well as to the subsequent attachment sale. It may be said that in doing these things "they buttered their bread on both sides."

See bankrupt proceedings, pages 177, and 191 of this record; and attachment proceedings, pages 103 and 84 of the printed record in this case, and defendant in error, when he purchased the lands in controversy of grantors, knew or might have known from the records

of the bankrupt court and the Register of Deeds' office of Wyandotte County, Kansas, where the land lies—and the existing actual possession of plaintiffs in error (defendants below) at that time and were charged with notice, of the title of plaintiffs in error, and of all that had been done in the bankrupt court.

The next conclusion of law—No. 4—is substantially the same as No. 3, being merely more specific conclusions drawn from the former conclusion—and the same remarks apply to both.

The two conclusions, 5 and 6, are in regard to the jurisdiction of the court in the attachment title matters, under which defendants in error claim—which, as Jus- Miller says, are all subsequent to our decree and sale under the bankrupt proceedings—and therefore, if the bankrupt title is good, cut no figure whatever.

And while we deny that this attachment serviee gave the court any jurisdiction for the reason that the return of the officer does not show that he left a copy of the order of attachment with any person, or posted it in a conspicuous place on the premises. (See findings of fact Nos. 20, 21.) Yet, as we are not sure whether the delivery of possession of premises merely under color of a jedicial sale, pursuant to an act of Congress and under color of federal authority, sufficiently presents a federal question, where that possession is afterward attacked under void attachment proceedings, we have not thought best to discuss it here.

Of course, if our title under the bankrupt sale is good, it does not need to be discussed.

But snppose, for the sake of the argument, some defect be found in our bankrupt proceedings, yet still our possession was given under color of federal authority

under color of a federal judicial sale, can our possession be attacked by one who is claiming under a void attachment sale subsequent to the bankrupt proceedings, which is in no better shape?

And when the State court has sustained such service and the Sheriff's title thereunder, and an appeal is taken to the Supreme Court of the United States, does that question of prior possession under federal authority merely as against a void attachment sale under State authority, present a federal question?

I refrain from discussing that matter now, as it seems to me at this time unnecessary, in view of the fact that I believe the bankrupt title is good, and not subject to collateral attack.

If the case should, contrary to my expectations, ever reach the condition that it would be necessary to present my views on that aspect of the case, I should be happy to present them.

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Justice Miller has looked all through the bankrupt record referred to on pages 151 and 203 of the record, and his opinion is based on the record of the bankrupt court and the deeds on file in the Register of Deeds' office alone, and it seems idle for the Supreme Court of Kansas to say, as they have said in the opinion of 42 Kansas, page 197, that the "bill in that case did not "disclose all the facts testified to and found by the trial "court in the case." There are no findings of fact in this case and no evidence in this record that can by any strained conclusion conflict with the truth and correctness, or in the least alter the logic of that opinion.

Hence we conclude that the question No. I, above has

been answered: that the matter was *res adjudicata* in the bankrupt court in 1871.

But if not, and the II is still an open question, then by the findings of fact and the record in this case, it is fully and fairly answered that the property sold was in fact bankrupt assets, and therefore properly sold as such; and the conclusions of law of the trial court are erroneous. The findings of fact compel a judgment in favor of plaintiffs in error—defendants below.

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